



भारत का राजपत्र The Gazette of India

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No. 3]

NEW DELHI, SATURDAY, JANUARY 16, 1993/PAUSA 26, 1914

इस भाग में द्वितीय खण्ड संख्या की जाती है जिससे कि यह अलग संग्रहण के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-Section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders Notifications issued by the Ministries of the Government of India (other than
the Ministry of Defence)

वित्त मंत्रालय

(व्यय विभाग)

नई दिल्ली, 24 दिसम्बर, 1992

को आ 85—अधिव्यक्ति क्रमिक, 1925 (1925 का 19)
की धारा 8 का उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए
केन्द्रिय सरकार एतद्वारा उक्त अधिव्यक्ति का अनुसूचि में निम्नलिखित
वर्तक संस्थान को शामिल किया है :—

"147. राष्ट्रीय मानसिक स्वास्थ्य एवं ब्रह्म विज्ञान संस्थान,
बंगलूर।"

[अध्या 4(1)-संख्या 9/92(1)]

जी. जोसेफ, निदेशक

MINISTRY OF FINANCE
(Department of Expenditure)

New Delhi, the 24th December, 1992

S.O. 85.—In exercise of the powers conferred by sub-
section (3) of section 8 of the Provident Fund Act, 1925
(19 of 1925), the Central Government hereby adds to the
Schedule to the said Act the name of the following public
institution, namely :—

"147. National Institute of Mental Health and Neuro
Science (Nimhans), Bangalore"

[No. 4(1)-E.V./92(1)]

G. JOSEPH, Director

नई दिल्ली, 24 दिसम्बर, 1992

आ.सं. 86—अधिव्यक्ति क्रमिक, 1925 (1925 का
19) की धारा 8 का उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते
हुए केन्द्रिय सरकार एतद्वारा निदेश देती है कि उक्त अधिव्यक्ति के
अनुसूचि (या 6A) की छोड़कर "राष्ट्रीय मानसिक स्वास्थ्य एवं ब्रह्म
विज्ञान संस्थान, बंगलूर" के संस्थापकों के अलावा के लिए सम्पादित
अधिव्यक्ति पर लागू होगी।

[अध्या 4(1)-संख्या 9/92 (II)]

जी. जोसेफ, निदेशक

New Delhi, the 24th December, 1992

S.O. 86.—In exercise of the powers conferred by sub-
section (2) of section 8 of the Provident Funds Act, 1925
(19 of 1925), the Central Government hereby directs that
the provisions of the said Act (except section 6A) shall
apply to the Provident Fund established for the benefit of
the employees of the "National Institute of Mental Health
and Neuro Science (Nimhans), Bangalore."

[No. 4(1)-E.V./92(II)]

G. JOSEPH, Director

खाद्य मंत्रालय

नई दिल्ली, 21 दिसम्बर, 1992

का.प्र. 87.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में, खाद्य मंत्रालय के अधीन कार्यरत कार्यालयों, जिनके कर्मचारी ने हिंदी का कार्य में माहिर और प्राप्ति प्राप्त किया है, को अधिसूचित करता है :—

- (1) भारतीय खाद्य निगम, जिला कार्यालय सतना (मध्य प्रदेश)
- (2) भारतीय खाद्य निगम, जिला कार्यालय, उज्जैन (मध्य प्रदेश)
- (3) कार्यालय सहायक प्रबन्धक (डिपो), भारतीय खाद्य निगम, उज्जैन, (मध्य प्रदेश)
- (4) कार्यालय सहायक प्रबन्धक (डिपो), भारतीय खाद्य निगम, रतलाम (मध्य प्रदेश)।
- (5) कार्यालय सहायक प्रबन्धक (डिपो), भारतीय खाद्य निगम, देवास (म.प्र.) :

[संख्या ई-11017/10/89-हिंदी]

आर.के. गंगार, निदेशक

MINISTRY OF FOOD

New Delhi, the 21st December, 1992

S.O. 87.—In pursuance of sub-rule 4 of rule 10 of the Official Language (Use for official purposes of the Union) Rules, 1976, the Central Government hereby notifies the following offices under the administrative control of the Ministry of Food, the staff whereof have required the working knowledge of Hindi :—

- (1) Food Corporation of India, District Office, Satna (M.P.).
- (2) Food Corporation of India, District Office Ujjain (M.P.).
- (3) Office of the Assistant Manager (Depot), Food Corporation of India, Ujjain (M.P.).
- (4) Office of the Assistant Manager (Depot), Food Corporation of India, Ratlam (M.P.).
- (5) Office of the Assistant Manager (Depot), Food Corporation of India Devas (M.P.).

[No. E-11017/10/89-Hindi]

R. K. GANGAR, Director

वस्त्र मंत्रालय

नई दिल्ली, 24 दिसम्बर, 1992

का.प्र. 88.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में वस्त्र मंत्रालय के अधीन आने वाले निम्नलिखित कार्यालयों को, जिनमें 80 प्रतिशत कर्मचारीयुक्त ने हिंदी का कार्य माहिर ज्ञान प्राप्त कर लिया है, अधिसूचित करता है :—

राष्ट्रीय रेशम उत्पादन परिषद्
रेशम कंठ बॉज उत्पादन केन्द्र,
767 ओ.टी.सी. ब्लॉक, रानी रोड,
उदयपुर-313001, राजस्थान।

[सं. ई-11011/18/89-हिंदी]

कीर्ति कुमार, उप सचिव

MINISTRY OF TEXTILES

New Delhi, the 24th December, 1992

S.O. 88.—In pursuance of Sub-rule 4 of Rule 10 of the Official Language (Use for Official Purposes of the Union), Rule, 1976 the Central Government hereby notifies the following office under the Ministry of Textiles whereof more than 80 per cent staff have acquired working knowledge of Hindi :—

National Sericulture Project,
Silkworm Seed Production Centre,
767 O.T.C. Scheme, Rani Road,
Udaipur-313001 (Rajasthan).

[No. E-11011/18/89-Hindi]

KIRTHY KUMAR, Dy. Secy.

कीयला मंत्रालय

नई दिल्ली, 11 जनवरी, 1993

का. प्र. 89.—केन्द्रीय सरकार ने कीयला मंत्रालय (शर्जन और विकास) अधिनियम 1957 (1957 का 20) की धारा 8, उप-धारा (1) के अधीन आने वाले भारत के राष्ट्रपति द्वारा 2 अक्टूबर (ii) पाठ संख्यांक 555 से 518 में प्रकाशित भारत सरकार, ऊर्जा मंत्रालय (कीयला विभाग) को अधिसूचना का प्र. 402, दिनांक 24 फरवरी, 1990 और अधिसूचना का प्र. 3140 दिनांक 15 दिसम्बर 1990 द्वारा इस अधिसूचना से संबंधित अनुसूची में वर्णित भूमि का अधिग्रहण करने के अने अर्थों की सूची दी गई है।

और केन्द्रिय सरकार का जावकारी में यह बात बताई गई कि राजपत्र में प्रकाशित उपरोक्त अधिसूचना में सूचना की कुछ गलतियाँ हैं।

अतः अब के शरीर सरकार के अधिनियम का धारा 7 का उपधारा (1) द्वारा प्रदत्त शक्तियों अंतर्गत इस निम्नलिखित सूची में वर्णित भूमि को अधिसूचना के अधीन करने हेतु उक्त अधिसूचना में निम्नलिखित संशोधन किया जा रहा है :

पाठ का. 518—

सम लालपुर में अधिसूचित किए जाने वाले पाठ संख्यांक में—

पंक्ति 2 में—190 (111), 191 (साग) के स्थान पर 190 (साग), 191 (साग), (साग), 192 पढ़ें।

सम नेहरीया भाग में अधिसूचित किए जाने वाले पाठ संख्यांक में।

पंक्ति 1 में 194 में 235 के स्थान पर 191 में 235 पढ़ें।

सम वर्णन संघ का नाम

पंक्ति 3 में 249, 247 के स्थान पर 249, 248, 247 पढ़ें।

उक्त भूमि में निम्नी बाधा उत्पन्न होगी माना जाये कि या गया है, जिससे कोई भी अधिसूचना के जारी किए जाने के तीस दिन के बाद उक्त भूमि का संपूर्ण या कि भाग के उक्त ऐसी भूमि में या उन पर किए अधिग्रहण के अधीन किए जाने के निम्नलिखित अधिनियम का धारा 8 की उपधारा (1) के विधियों के अनुसार अधिग्रहण कर संभव है।

संशोधन :—

केवल इस अधिसूचना के द्वारा अधिसूचित किए जाने वाले अधिसूचना के धारा 8(1) के विधियों के अनुसार तीस दिन की उक्त अधिसूचना के राजपत्र में प्रकाशित किए जाने का तारीख से आरंभ होगा।

[सं. 13015/13/86 सी.ए./एन.एस.ए.ए.ए.]

बी. बी. गा. अवर सचिव

MINISTRY OF COAL

New Delhi, the 11th January, 1993

S.O. 89.—Whereas by the notification of the Government of India in the then Ministry of Energy (Department of Coal) number S. O. 452, dated the 16th February, 1990, published in the Gazette of India, Part II, Section 3, Sub-Section (ii), dated the 24th February, 1990 at pages 535 to 538 issued under sub-section (1) of section 7 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act) and amended vide notification number S.O. 3340 dated the 27th November, 1990, published in the Gazette of India, Part II, Section 3, Sub-Section (ii), dated 15th December, 1990, at pages 5592 to 5594, the Central Government gave notice of his intention to acquire the lands described in the Schedule appended to that notification;

And whereas it has been brought to the notice of the Central Government that certain errors of printing nature have occurred in the publication of the said notification in the Gazette;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 7 of the said Act, the Central Government hereby further amends the Schedule appended to the said notification, published in the Official Gazette dated 24th February, 1990, as follows :—

at page 538, in "Boundary Description" in line "H I" for "581, 570, 567, 506, 510" read "581, 570, 569, 506, 509, 510".

Any person interested in any land in respect of which the above amendment has been issued may within thirty days of the issue of this notification, object to the acquisition of the whole or any part of the said land, or any right in or over such lands in terms of sub-section (1) of section 8 of the said Act;

EXPLANATION :

In respect of plot numbers amended through this notification of the said period of thirty days in terms of section (1) of the said Act starts running from the date of issue of this notification.

The Coal Controller, 1, Council House Street, Calcutta, 700 001, has been appointed by the Central Government as the competent authority under the said Act.

[No. 43015/23-86-CA/LSW]

B. B. RAO, Under Secy.

उद्योग मंत्रालय

(औद्योगिक विकास विभाग)

आदेश

नई दिल्ली, 16 दिसम्बर, 1992

का.आ. 90.—केन्द्रीय निम्नलिखित सेवा (वर्धन, नियंत्रण तथा अधिग्रहण) नियम, 1965 के नियम 9 के उप-नियम (2), नियम 12 के उप-नियम (2) के खण्ड (ख) और नियम 23 के उप-नियम (1) के अनुसूची में राष्ट्रपति, भारत सरकार, औद्योगिक विकास विभाग के तारिख 28 नवम्बर, 1985 के आदेश में का.आ. 5593 में एन.ए. द्वारा निम्नलिखित संशोधन करने है —

उक्त आदेश का अनुसूची में—

- (1) "सामान्य केन्द्रीय सेवा, ग्रुप 'ख' में संबंधित भाग II में कालम 1 के अन्तर्गत प्रविष्टि में संकेताक्षर तथा आंकड़े "900 रु." के स्थान पर संकेताक्षर तथा आंकड़े "2900 रु." रखे जायेंगे और

- (2) "सामान्य केन्द्रीय सेवा ग्रुप 'ख' में संबंधित भाग II में संकेताक्षर तथा आंकड़े "700 रु." के स्थान पर संकेताक्षर तथा आंकड़े "2600 रु." रखे जायेंगे।

[र. 3/1/93-कलकत्ता]
ई.एन. मूर्ति, सहाय सचिव

सादर प्रेषण.

मुख्य अधिष्ठाता भारत के राजपत्र भाग II, खंड 3, उप-खंड (ii), दिनांक 14 दिसम्बर, 1985 में का.आ. 5593, क्रि.क्र. 28 नवम्बर, 1985 के तहत प्रकाशित किया गया था।

MINISTRY OF INDUSTRY

(Department of Industrial Development)

ORDER

New Delhi, the 16th December, 1992

S.O. 90.—In pursuance of sub-rule (2) of rule 9, clause (b) of sub-rule (2) of rule 12 and sub-rule (1) of rule 24 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, the President hereby makes the following amendments in the Order of the Government of India in the Department of Industrial Development, number S.O. 5594, dated the 28th November, 1985, namely :—

In the Schedule to the said Order,—

- (i) in part I relating to "General Central Service Group B", in the entry under column 1, for the abbreviation and figures "Rs. 900/-" the abbreviation and figures "Rs. 2900" shall be substituted, and
- (ii) in Part II relating to "General Central Service Group C", in the entry under column 1, for the abbreviation and figures "Rs. 700" the abbreviation and figures "Rs. 2600" shall be substituted.

[No. 3/8/92-Vig]

E. N. MURTHY, Jt. Secy.

Foot Note.—The Principal Order was published in the Gazette of India, Part II, Section 3, Sub-section (ii) dated the 14th December, 1985 vide S.O. 5594 dated the 28th November, 1985.

संस्कृति विभाग

(भारतीय पुरातत्व सर्वेक्षण)

नई दिल्ली, 20 दिसम्बर, 1992

(पुरातत्व)

का.आ. 91.—केन्द्रीय सरकार ने, प्राचीन संस्मारक तथा पुरा-तत्वों के रख-रखाव और अधिग्रहण अधिनियम, 1958 (1958 का 24) की धारा 4 की उपधारा (i) की शर्तानुसार भारत सरकार के संस्कृति विभाग (भारतीय पुरातत्व सर्वेक्षण) की अधिसूचना संकां.आं. 800, तारीख 26 फरवरी, 1992 द्वारा, जो भारत के राजपत्र, भाग 2, खंड 3, उपखंड (ii) तारीख 13 मार्च, 1992 में प्रकाशित की गई थी, उक्त अधिसूचना की अनुसूची में विनिर्दिष्ट संस्मारक को राष्ट्रीय महत्व का घोषित करने के अर्पण आदेश का दो मास का सूचना दी थी और उस अधिसूचना की एक प्रति उक्त संस्मारक के समीप सहज दृश्य स्थान पर लगा दी गई थी;

और उक्त आदेश 13 मई, 1992 को बनना का प्रकाश कर दिया गया था;

और केन्द्रीय सरकार को शिवाजी वाकि से कोई प्राप्ति प्राप्त नहीं हुआ था।

अतः अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 3 की उप-धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त उपखंड अनुसूची में विनिर्दिष्ट प्राचीन संस्मारक को राष्ट्रीय महत्व का होता घोषित करती है।

अनुसूची

राज्य	जिला	परिशेरा	सम्मारक/स्थल का नाम	परिक्षण के लिए प्रामाणिक जमीन जो राजस्व प्लॉट में लक्ष्य	क्षेत्र	समाप्ति
1	2	3	4	5	6	7
उड़ीसा	कटक	जाजपुर टाउन	जगन्नाथ मंदिर जिसमें मुक्तेश्वर मंदिर स्नान बेदी, भोगशाला और मंदिर के चारों तरफ के घाटों के दीवार तथा उनमें और पुराने द्वार में सम्मिलित हैं।	सर्वेक्षण प्लॉट नम्बर 13	0.79	उत्तर : सर्वेक्षण प्लॉट नं. 3, 9, 10, 11, 12 और 315 पूर्व : सर्वेक्षण प्लॉट नं. 311, 312 और 401 दक्षिण : सर्वेक्षण प्लॉट नं. 343 (मार्ग) पश्चिम : सर्वेक्षण प्लॉट नं. 393
स्वामिस्थ				टिप्पणियाँ		
8				9		
लोक नाम (भक्त)				मंदिर में पूजा होती है।		

[फा. नं. 1/19/88-एम]

प्र. म. र. विभाग, महाविभाग

DEPARTMENT OF CULTURE

(Archaeological Survey of India)

New Delhi, the 29th December, 1992

(ARCHAEOLOGY)

S.O. 91.—Whereas by a notification of the Government of India in the Department of Culture (Archaeological Survey of India) No. S.O. 800 dated the 26th February, 1992 published in the Gazette of India, Part-II, Section 3, sub-section (ii), dated the 14th March, 1992 the Central Government gave two months notice of its intention to declare the monument specified in the Schedule to the said

notification to be of national importance had a copy of the notification was affixed in a conspicuous place near the said monument as required by sub-section (1) of section 4 of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);

And whereas the said Gazette was made available to the public on 13th May, 1992,

And whereas no objection from any person has been received by the Central Government.

Now, therefore in exercise of the powers conferred by sub-section 3 of section 4 of the said Act, the Central Government hereby declares the ancient monument specified in the Schedule annexed hereto to be of national importance.

SCHEDULE

State	District	Locality	Name of Monument	Revenue plot numbers included under protection	Area	Boundaries	Ownership	Remarks
1	2	3	4	5	6	7	8	9
Orissa	Cuttack	Jaipur Town	Jagannath Temple including Mukteswar Temple, Sana Bedi, Bhogshala and compound wall around the temple including North and East Gates.	Survey plot No. 13	0.79	North : Survey plot Nos. 3, 9, 10, 11, 12 and 315 East :—Survey plot Nos. 311, 312 and 401. South :—Survey Plot No. 343 (Road) West :—Survey Plot No. 394.	Public Trust (Mahanta)	Temple is under worship.

[No. 2/19/88-M]

M.C. JOSHI, Director General

मुद्रित पत्र	1	2	3	4	5
नई दिल्ली, 29 दिसम्बर, 1992					
का.आ. 92.—भारत सरकार, संस्कृति विभाग (भारतीय पुरातत्व सर्वेक्षण) का अधीन में अधिरूचना संख्या एस ओ 803 दिनांक 26 फरवरी, 1992 में जो भारत के राजपत्र के भाग-II, खण्ड 2, उपखंड (ii) दिनांक 14 मार्च, 1992 में प्रकाशित हुई थी, का अनुसूची के तालिका 1411 में काव्यम शर्मा से संबंधित काव्यम 3 से "स्मारक का नाम" के स्थान पर "स्थल का नाम" पढ़ा जाए।		842	0	07	64
		841	0	04	94
		847	0	00	32
		848	0	05	20
		कार्ट ट्रैक	0	00	65
		798	0	07	28
		799	0	10	40
		कार्ट ट्रैक	0	00	52
		797	0	00	68
		766/बी	1	24	90
		766/ए	0	28	16
		737	0	08	81
		725	0	04	94
		724	0	05	20
		721/ए	0	36	40
		728	0	08	06

[स. 2/35/88-एम]

मुनाश चन्द्र जोशी, महानिदेशक

CORRIGENDUM

New Delhi, the 29th December, 1992

S.O. 92.—In English version of the notification of the Government of India in the Department of Culture (Archaeological Survey of India) number S.O. 803, dated the 26th February, 1992, published in the Gazette of India, Part II, Section 3, Sub-section (ii) dated the 14th March, 1992 at page 1411, in the schedule, in the column heading relating to column 4, for "Name of monument" read "Name of Site".

[No. 2/35/88-M]

M. C. JOSHI, Director General

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 21 दिसम्बर, 1992

का.आ. 93.—यह केन्द्रीय सरकार को यह पता चलता है कि लोकहित में यह आवश्यक है कि गुजरात राज्य में जंबुसर (पी) से जो एन ए. क्यू. जं.जी.एस. तक पेट्रोलियम के परिवहन के लिये पाइपलाइन तेल तथा प्राकृतिक गैस प्रायोग द्वारा बिछाई जानी चाहिए।

और, अतः, यह पता चलता है कि ऐसी लाइनों को बिछाने के प्रयोजन के लिए एनएलएल अनुसूची में वर्णित भूमि में उपयोग का अधिकार अर्जित करना आवश्यक है।

अतः, अब, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा द्वारा प्रदत्त शक्तियों का प्रयोग करने हुए केन्द्रीय सरकार ने इसमें उपयोग का अधिकार अर्जित करने का अपना आशय एनएलएल घोषित किया है।

यह कि उक्त भूमि में हित रख कोई व्यक्ति, उस भूमि के नीचे पाइप लाइन बिछाने के लिए विशेष गहन प्राधिकारी, तेल तथा प्राकृतिक गैस प्रायोग, निष्पत्ति और देखभाल प्रभाग, मकरपुरा रोड, बड़ौदा-9 को इस अधिसूचना की तारीख से 21 दिनों के भीतर कर सकेगा।

और ऐसा आक्षेप करने वाला हर व्यक्ति विनिश्चित: यह भी बताना होगा कि क्या वह चाहता है कि उसकी सुनवाई व्यक्तिगत रूप से हो या किसी विधि व्यवसायी की माफ़त।

अनुसूची

जंबुसर (पी) से जो एन ए. क्यू. जो.जी.एस. तक पाइप लाइन बिछाने के लिए।

राज्य : गुजरात	जिला : भाकच	तालुका : जंबुसर		
गांव	ब्लॉक नं.	हेक्टेयर	आर.	सेटीयर
1	2	3	4	5
कालक	838/8	0	00	52
	814	0	07	54
	843	0	07	80

MINISTRY OF PETROLEUM & NATURAL GAS

New Delhi, the 21st December, 1992

S.O. 93.—Whereas it appears to the Central Government that it is necessary in the public interest that for the transport of petroleum from Jambusar (P) to GNAQ-GGS in Gujarat State pipeline should be laid by the Oil & Natural Gas Commission.

And, whereas, it appears that for the purpose of laying such pipeline, it is necessary to acquire that right of user in the land described in the schedule annexed hereto :—

Now, therefore, in exercise of the powers conferred by sub-section (1) of the section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in the Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Provided that any person interested in the said land may, within 21 days from the date of this notification, object to the laying of the pipeline under the land to the Competent Authority, Oil & Natural Gas Commission, Construction & Maintenance Division, Makarpura Road, Vadodra-390009.

And every person making such an objection shall also state specifically whether he wishes to be heard in person or by legal practitioner.

SCHEDULE

Pipeline from Jambusar (P) to GNAQ GGS

State : Gujarat District : Bharuch Taluka : Jambusar				
Village	Block No.	Hectare	Are	Centiare
1	2	3	4	5
Kalak	838/8	0	00	52
	844	0	07	54
	843	0	07	80
	842	0	07	64
	841	0	04	94
	847	0	00	32
	848	0	05	20
	Cart track	0	00	65

1	2	3	4	5
	798	0	07	28
	799	0	10	40
	Cart track	0	00	52
	797	0	00	68
	766/B	1	24	90
	766/A	0	28	16
	737	0	08	84
	725	0	04	94
	724	0	05	20
	721/A	0	36	40
	728	0	08	06

[No. O-12016/88/92-ONGD-IV]
M. MARTIN, Desk Officer

नई दिल्ली, 21 दिसम्बर, 1992

का आ. 94.--यह केन्द्रीय सरकार को यह प्रतीत होता है कि लोकहित में यह आवश्यक है कि गुजरात राज्य में जम्बसर (पी) में जो एन ए.क्यू.जी.जी.एम. नक पेट्रोलियम के परिवहन के विषय पर 1962 में तैयार किया गया प्राकृतिक गैस आयोग द्वारा बिछाई जानी चाहिए।

और, यहाँ, यह प्रतीत होता है कि ऐसी लाइनों को बिछाने के प्रयोजन के लिए एन.ए.क्यू.जी.जी.एम. नक पेट्रोलियम के परिवहन के अधिकार अंशित करना आवश्यक है।

अतः, अब, पेट्रोलियम और अतिरिक्त पावर लाईन (भूमि में उपयोग के अधिकार का अधिनियम, 1962 (1962 का 50) का प्राग 3 की उप-धारा द्वारा प्रदान शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार ने उसमें उपयोग का अधिकार अंशित करने का अपना आणख एन.ए.क्यू.जी.जी.एम. नक किया है।

यह कि उक्त भूमि में हितवादी कोई व्यक्ति, उस भूमि के नीचे, पाइप लाइन बिछाने के लिए आश्रय गैस प्राधिकारी, तेल तथा प्राकृतिक गैस आयोग, निर्माण और देखभाल प्रभाग, मकरपुरा रोड, बड़ोदा-9 को इस अधिसूचना की तारीख से 21 दिनों के भीतर कर सकेगा।

और ऐसा आदेश करने वाला हर व्यक्ति निम्नलिखित: यह भी कथन करेगा कि क्या यह वह लाइना है कि उसकी सुनवाई व्यक्तिगत रूप से या या फिर निम्नलिखित व्यक्तियों की मार्फत।

अनुसूची

जम्बसर (पी) में जो एन.ए.क्यू.जी.जी.एम. नक आदेश लाईन बिछाने के लिए।

राज्य : गुजरात	जिला : भरुच	तालुका : जम्बसर		
1	2	3	4	5
	371	0	11	44
	372	0	10	98
	373	0	05	20
	374	0	06	50
	379	0	00	18
	380	0	06	42
	383	0	23	92
	384	0	12	22
	395	0	18	85
	कार्ट ट्रैक	0	00	52
	397	0	00	58

1	2	3	4	5
	396	0	01	95
	408	0	17	16
	409	0	15	86
	411	0	20	89
	428	0	01	56
	414	0	04	55
	422	0	16	25
	420	0	15	60
	10	0	00	18
	11	0	11	44
	13	0	10	92
	14/ए	0	00	80
	15	0	13	65
	16	0	10	66

[म. आ-12016/89/92-आ एन ओ डा-1]

एम. मांडा, डेस्क अधिकारी

New Delhi, the 21st December, 1992

S.O. 94.--Whereas it appears to the Central Government that it is necessary in the public interest that for the transport of petroleum from Jambusar (P) to GNAQ-GGS in Gujarat State pipeline should be laid by the Oil & Natural Gas Commission.

And, whereas, it appears that for the purpose of laying such pipeline, it is necessary to acquire that right of user in the land described in the schedule annexed hereto :--

Now, therefore, in exercise of the powers conferred by sub-section (1) of the section 3 of the Petroleum and Mineral Pipelines (Acquisition of Right of User in the Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Provided that any person interested in the said land may, within 21 days from the date of this notification, object to the laying of the pipeline under the land to the Competent Authority, Oil & Natural Gas Commission, Construction & Maintenance Division, Makarpura Road, Vadodra-390009.

And every person making such an objection shall also state specifically whether he wishes to be heard in person or by legal practitioner.

SCHEDULE

Pipeline from Jambusar (P) To GNAQ GGS State: Gujarat District: Bharuch Taluka: Jambusar				
Village	Block No.	Hectare Area	Centiare	
1	2	3	4	5
Umara	371	0	11	44
	372	0	10	98
	373	0	05	20
	374	0	06	50
	379	0	00	48
	380	0	06	42
	383	0	23	92
	384	0	12	22
	395	0	18	85
	Cart track	0	00	52
	397	0	00	58
	396	0	01	95

1	2	3	4	5	2	3	4	5
	408	0	17	16	138	0	04	20
	409	0	15	86	169	0	25	08
	411	0	20	80	170	0	05	28
	428	0	01	56	161	0	08	10
	414	0	04	55	159	0	25	30
	422	0	16	25	158	0	25	90
	420	0	15	60	157	0	04	25
	10	0	00	18	156	0	02	60
	11	0	11	44	132	0	48	30
	13	0	10	92	131	0	12	20
	14/A	0	00	80	130	0	12	60
	15	0	13	65	128	0	20	60
	16	0	10	69	127	0	05	80
[No. O-12016/89/92-ONGD-IV] M. MARTIN, Desk Officer					फाईल नं०	0	01	40
नई दिल्ली, 21 दिसम्बर, 1992					125	0	20	60

का.भा. 95 - यहाँ पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) के अधीन भारत सरकार के ऊर्जा मंत्रालय पेट्रोलियम विभाग की अधिसूचना का आ.सं. 1349 तारीख 13-5-92 द्वारा केन्द्रीय सरकार ने उस अधिसूचना में गंजस अतुसूची में विनिर्दिष्ट भूमियों में उपयोग के अधिकार को राष्ट्रपत्याहनों की विछाने के लिए अर्जित करने का अपना आणख घोषित कर दिया था।

और यहाँ गंजस प्राधिकारी ने उक्त अधिनियम की भाग 6 की उपधारा (1) के अधीन सरकार की रिपोर्ट दे दी है।

और आगे, यहाँ केन्द्रीय सरकार ने उक्त रिपोर्ट पर विचार करने के पश्चात् इस अधिसूचना में गंजस अतुसूची में विनिर्दिष्ट भूमियों में उपयोग का अधिकार अर्जित करने का विनिश्चय किया है।

अतः, आगे उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्ति का प्रयोग करते हुए केन्द्रीय सरकार एम्बुद्दाय घोषित करती है कि इस अधिसूचना में गंजस अतुसूची में विनिर्दिष्ट उक्त भूमियों में उपयोग का अधिकार पाइपलाइन विछाने के प्रयोजन के लिए एम्बुद्दाय अर्जित किया जाता है।

आर आगे उस धारा की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार निर्देश देती है कि उक्त भूमियों में उपयोग का अधिकार केन्द्रीय सरकार में निहित होने को बचाल तेल और प्राकृतिक गैस आयोग में, सभी बंधनों में मुक्त रूप में, घोषणा के प्रकाशन के, इस तारीख की तिथि होगा।

अनुसूची

ए.बी.जी.एन.टी. बिन्दु से गुजरात गार्डियन तक पाइप लाइन बिछाने के लिए

राज्य : गुजरात जिला : धारुच तालुका : अंकलेश्वर

गाँव	ब्लॉक नं.	हेक्टेयर	आगे	सैंटीयर
1	2	3	4	5
बाकरोल	185	0	20	10
	186	0	27	55
	179	0	17	85
	182	0	16	70
	181	0	18	60
	180	0	22	80

[सं. अं-12016/20/92-आ.एन.जी.सी-4]

एम. मार्टिन, डेस्क अधिकारी

New Delhi, the 21st December, 1992

S.O. 95.—Whereas by notification of the Government of India in the Ministry of Petroleum & Natural Gas S.O. No. 1349 dated 13-5-92 under sub-section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government declared its intention to acquire the right of user in lands specified in the schedule appended to that notification for the purpose of laying pipeline;

And whereas the Competent Authority has under sub-section (1) of the Section 6 of the said Act, submitted report to the Government;

And further whereas the Central Government has, after considering the said report decided to acquire the right of user in the lands in the Schedule appended to this notification;

Now therefore, in exercise of the power conferred by sub-section (1) of the Section 6 of the said Act the Central Government hereby declares that the right of user in the said land specified in the schedule appended to this notification hereby acquired for laying the pipeline;

And further in exercise of power conferred by sub-section (4) of the section, the Central Government directs that the right of user in the said lands shall instead of vesting in Central Government vests on this date of the publication of this declaration in the Oil & Natural Gas Commission free from encumbrances.

SCHEDULE

Pipeline from ABGLT' Point to Gujarat Guardian

State : Gujarat District : Bharuch Taluka : Ankleshwar

Village	Block No.	Hectare	Area	Con- tiare
1	2	3	4	5
Bakrol	185	0	30	10
	186	0	27	55
	179	0	17	85
	182	0	16	70
	181	0	18	60

1	2	3	4	5
	180	0	22	80
	168	0	04	20
	169	0	25	08
	170	0	05	28
	161	0	08	10
	159	0	25	30
	158	0	25	90
	157	0	04	25
	156	0	02	60
	132	0	48	30
	131	0	12	20
	130	0	12	60
	128	0	20	60
	127	0	05	80
	Cart track	0	01	40
	125	0	20	60

[No. O-12016/20/92-ONG.D IV]

M. MARTIN, Desk Officer

नई दिल्ली, 21 दिसम्बर, 1992

का.प्रा. 96 —यतः पेट्रोलियम और खनिज पाइप लाइन भूमि में उपयोग के अधिकार का अधिनियम 1962 (1962 का 50) की धारा 3 की उपधारा (1) के अधीन भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना का.प्रा.सं. 1345 तारीख 30-5-92 द्वारा केन्द्रीय सरकार ने इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमियों में उपयोग के अधिकार को पाइपलाइनों को बिछाने के लिए अर्जित करने का अपना प्राण्य घोषित कर दिया था।

और यतः मध्यम प्राधिकारी ने उक्त अधिनियम की धारा 6 की उपधारा (1) के अधीन सरकार का रिपोर्ट दे दी है।

और आगे, यतः केन्द्रीय सरकार ने उक्त रिपोर्ट पर विचार करने के पश्चात् इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमियों में उपयोग का अधिकार अर्जित करने का विनिश्चय किया है।

अतः, अतः उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्ति का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा घोषित करती है कि इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट उक्त भूमियों में उपयोग का अधिकार पाइपलाइन बिछाने के प्रयोजन के लिए एतद्वारा अर्जित किया जाता है।

और आगे इस धारा की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार निर्देश देती है कि उक्त भूमियों में उपयोग का अधिकार केन्द्रीय सरकार में विहित होने को बजाय तेल और प्राकृतिक गैस आयोग में सभी बाधाओं से मुक्त रूप में घोषणा के प्रकाशन की इस तारीख को निहित होगा।

अनुसूची

पञ्जाब जी.जी.एस. में टी. बिन्दु तक पाइप लाइन बिछाने के लिए
राज्य : गुजरात जिला : सरुच तालुका : वाग्रा

गांव	ब्लॉक नं.	हेक्टेयर	आर	मेट्रोयर
1	2	3	4	5
तांकल	206	0	11	96
	207	0	13	52
	205	0	15	08
	204	0	08	45
	203	0	13	65
	226	0	25	74

1	2	3	4	5
	199	0	01	30
	200	0	08	58
	193	0	12	74
	192	0	17	55
	191	0	10	40
	162	0	45	50
	163	0	01	56
	182	0	08	84
	178	0	06	24
	179	0	09	36
	177/P	0	15	08
	वेरन नैण्ड	0	02	08

[सं. ओ-12016/16/92-ओ एन जी डी-IV]

एम. मार्टिन, डेस्क अधिकारी

New Delhi, the 21st December, 1992

S.O. 96.—Whereas by notification of the Government of India in the Ministry of Petroleum & Natural Gas S.O. No. 1345 dated 13-5-92 under sub-section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government declared its intention to acquire the right of user in lands specified in the schedule appended to that notification for the purpose of laying pipeline;

And, whereas, the Competent Authority has under sub-section (1) of the Section 6 of the said Act, submitted report to the Government;

And further whereas the Central Government has, after considering the said report decided to acquire the right of user in the lands in the Schedule appended to this notification;

Now therefore, in exercise of the power conferred by sub-section (1) of the Section 6 of the said Act the Central Government hereby declares that the right of user in the said land specified in the schedule appended to this notification hereby acquired for laying the pipeline;

And further in exercise of power conferred by sub-section (4) of the section, the Central Government directs that the right of user in the said lands shall instead of vesting in Central Government vests on this date of the publication of this declaration in the Oil & Natural Gas Commission free from encumbrances.

SCHEDULE

Pipeline from Pakhajan GGS to 'T' Point

State : Gujarat District : Bharuch Taluka : Vagra

Village	Block No.	Hectare	Area	Centiare
1	2	3	4	5
Trankal	206	0	11	96
	207	0	13	52
	205	0	15	08
	204	0	08	45
	203	0	13	65
	226	0	25	74
	199	0	01	30
	200	0	08	58
	193	0	12	74

Block No.	Hact.	Are.	Cent.
192	0	17	55
191	0	10	46
162	0	45	50
163	0	01	56
182	0	08	84
178	0	06	24
179	0	09	36
177/P	0	15	08
Barren land	0	02	08

[No. O-12016/16/92-ONG.D-IV]

M. MARTIN, Desk Officer

धर्म मंत्रालय

नई दिल्ली, 4 दिसम्बर, 1992

का. प्र. 97.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मजदूर बैंक आफ इंडिया के प्रबन्धन के संबंध में निम्नलिखित और उनके कर्मचारियों के बीच, अनुबंध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कलकत्ता के पक्षों को प्रकाशित करती है, जो केन्द्रीय सरकार की 2-12-92 को प्राप्त हुआ था।

[[संख्या एन-12012/51/88-डी-2(ए)]]

वी. के. वेणुगोपालन, डेस्क अधिकारी

MINISTRY OF LABOUR

New Delhi, the 4th December, 1992.

S.O. 97.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure in the Industrial Dispute between the employers in relation to the mgt. of Central Bank of India and their workmen, which was received by the Central Government on 2-12-92.

[No. L-12012/51/88-DII(A)]

V. K. VENUGOPALAN, Desk Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA**

Reference No. 150 of 1988

PARTIES:

Employer in relation to the management of Central Bank of India

AND

Their workmen.

PRESENT:

Mr. Justice Manash Nath Roy, Presiding Officer

APPEARANCE:

On behalf of management—Mr. S. M. Basu, Chief Officer (Law).

On behalf of Workmen—Mr. M. Bhunia, Representative of the Union.

STATE : West Bengal. INDUSTRY : Banking.

AWARD

The dispute in this case, which was referred for adjudication, was on the question, whether the action of the Management of Central Bank of India (hereinafter referred to as the said Bank), in terminating the services of Sarbasree Biswanath Goswami, Abhijit Pyne and Munna Lal Balmiki and also in not considering them for further employment. While recruiting fresh hands under section 25H of the Industrial Disputes Act 1947 (hereinafter referred to as the said Act), was justified and if not, to what relief they would be entitled?

2 GI/93-2.

2. It was claimed by the Central Bank of India Employees Union (hereinafter referred to as the said Union), who represented the employees concerned that the terms of service and conditions of employment of those employees, are guided and controlled by the provisions of the Desai Award, Sastri Award and Industrywise Bipartite Settlement. These facts are undisputed. But, it has been stated that the said Bank has flouted many of the provisions as contained therein, in designating the employees concerned as "Casual labour". The full particulars of the claims of the said Union, would appear from the statements as recorded hereafter.

3. It was the case of the said Union that Sri Abhijit Pyne, was engaged under the said Bank as Peon on casual basis (April from April 1980 and he performed such duty upto 1986, of course with some casual breaks and according to the said Union, the said Sri Pyne has rendered services for a total period of 266 days in different branches of the said Bank in the Siliguri Region and he was paid on daily wage basis. The number of days for which he was employed, was denied by the said Bank. Their case as pleaded are stated hereafter and more particularly, in paragraph 11(a). In fact, it has been indicated that from 1980—1986, he was employed for 295 days only.

4. So far Biswanath Goswami is concerned, the said Union has stated that his services were utilised by Bishan Market Branch of the said Bank, for supplying drinking water and apart from that, he was also asked to do the duties of Peon. According to the said Union the said Sri Goswami has worked as a casual employee for an aggregate period of 188 days, by working time to time from May 22, 1984 to May 28, 1986 and he was also paid on daily wage basis. The above engagement of Sri Goswami were also denied and disputed by the said Bank, as well appear from the facts recorded hereafter and more particularly, for the days as mentioned in paragraph 11(b).

5. In respect of Munnalal Balmiki, it has been claimed that he was employed and worked as 'Safai Karmachari' from April 28, 1986 to May 2, 1987, with intermittent breaks, as casual worker in Howrah Branch of the said Bank. It has been claimed that during the tenure of his service, he has worked for 182 days and his services were improperly discontinued with. It has been alleged that in spite of repeated requests of the employee concerned, the said Bank did not engaged him further. The above fact of the engagements for the dates as mentioned, were also denied and disputed, by the said Bank and their case has been indicated in paragraph 11(c) hereafter. It has been indicated that for years 1986 and 1987, Sri Balmiki was engaged for 182 days.

6. It has been stated that the said Bank held a Written Test some time in 1986, for the recruitment of Peons but the said Sri Abhijit Pyne and Biswanath Goswami were not called for the interviews and without giving them such opportunities, the services of Sarbasree Dipak Lama, Tilok Lama and Sagar Chandra Roy and many others, were taken, on the basis of recommendations of Employment Exchange and interviews held thereon. In fact, it has been claimed that those persons have also been absorbed permanently in the services of the said Bank.

7. It was the case of the said Union that Munnalal Balmiki applied to the said Bank for employment in the permanent vacancy of 'Safai Karmachari' on May 27, 1987, when some permanent vacancies of Safai Karmachari were going to be filled in, but the said Bank, did not consider his case, although the same was recommended by the Branch Manager of the Howrah Branch and on the other hand, permanent employments, for the concerned posts, have been given by the said Bank to Sarbasree Distu Sanapati, Indra Nayak and Rajesh Valmiki. There is of course no positive evidence available in respect of the above accommodation.

8. It has been stated that in view of the above happenings, the action of the said Bank or the validity thereof was referred to the ALC(C), who convened meetings, for settling the disputes. It has been stated that, during the course of

such proceedings, the said Bank different statements at different stages and times, but ultimately, there was a failure report, on the basis whereof, this Reference was made. It was claimed by the said Union that the actions of the said Bank, were in clear violation of Section 25H of the said Act and it would be evident from the facts of the case that Sri Abhijit Pyne and Sri Biswanath Goswami, joined as casual workers and worked in different branches of the said Bank in the Siliguri Region and after discontinuance of their services, the said Bank has employed the persons as mentioned in paragraph 6 above and allowed them to continue for 240 days in their services, for absorbing them in permanent services of the said Bank. In fact, there is no specific and categorical evidence to the above effect. It has been alleged that those persons as mentioned above, were called for interviews along with others from Employment Exchange and absorbed in the Bank's service against permanent vacancies, ignoring the claims of Sarbasree Pyne and Goswami, who were admittedly seniors. So far Sri Balmiki is concerned, it has been alleged that he was working as casual worker in the post of Safai Karmachari of Howrah Branch since April 28, 1986, which post again, has been presently filled in by the person as mentioned in paragraph 7 above and it would also appear from the records that there is a vague statement that the said Bank has given appointment to many outsiders as Safai Karmacharis, after the services of Sri Balmiki were dismissed with and such action, was also claimed to be in violation of Section 25H of the said Act and thus, it was stated that all actions as taken against the employees concerned, should be set aside, holding them to be unjustified and the workmen concerned, should be given due reliefs, in terms of the entitlements as if, they were and are in continuous services of the said Bank and that too with consequential service benefits, in addition to 16 per cent interest thereon. The persons, who have been claimed and alleged to be employed as Safai Karmacharis are not before this Tribunal. The above prayers can only be allowed and considered, if, ultimately the points as raised by them, succeed.

9. The said Bank by their Written Statement, filed on December 27, 1988, has taken the preliminary point that the issue as framed and referred for adjudication, was not maintainable in law, for non-application of mind, since the original dispute, raised on behalf of the employees concerned related to absorption of casual employee and as such, the question of the three employees as mentioned in the Order of Reference, was not maintainable. The Reference has further been claimed to be speculative and hypothetical, as there was no legal obligation of the said Bank, for the absorption of the casual employees as concerned in this case. I do not find much substance in the above submissions and claims.

10. The said Bank, as indicated earlier, has admitted that the terms of service and condition of employment of the employees under them, including their Rules for recruitment, to be governed by the Awards as mentioned earlier, apart from the Tripartite Settlement and guidelines and procedure as laid down by the said Bank, which includes Ext. W-1.

11. Without prejudice to such contentions, the said Bank has dealt with the cases of the employees concerned, individually and as under:

(a) It has been stated that Sri Pyne was initially engaged as a casual worker in the Bidhan Market Branch in the year 1980, according to the requirements of the said Bank, purely on temporary and casual basis and was paid on daily wage basis. It has been stated that in 1980, the said Sri Pyne worked only for 17 days in the Bidhan Market Branch and thereafter, in Siliguri Branch in 1983, he has worked for 13 days, in 1984, 35 days, in 1985, 55 days and in 1986 for 85 days. The total working of the said Sri Pyne in that Branch have been shown as 205 days in 5 years.

(b) So far Biswanath Goswami, it has been stated by the said Bank that he was also engaged as a casual worker on daily basis at Siliguri, Bidhan Market Branch. It has been stated, in Siliguri Branch, in 1984, the said Sri Goswami has worked for 34 days, in 1985, he has worked for 55 days in

1986 and 6 days, apart from working for 34 days, in Bidhan Market Branch in 1985.

(c) In respect of Munnalal Balmiki, the said Bank has said that he was also engaged as a casual worker on daily basis at the Howrah Branch as Safai Karmachari and such engagement was purely on casual basis. It has been stated that his services were utilised, as and when any permanent incumbent went on leave, due to ill health or otherwise and such services commenced with the staff of the concerned day and automatically came to end, with the end of that day or such engagement ended on resumption of duty by the permanent Safai Karmacharis, as employment, in whose place, he was engaged, at the Howrah Branch. As such, it has been stated that there was no fixed contract of employment, so far the said Balmiki was concerned and so, the question of appointment/termination letters issued to him, would not arise. It has been indicated in paragraph 5(c) of the said Bank's Written Statement that for the years 1986 and 1987, the said Sri Balmiki was engaged for 182 days only and that too, in the manner as indicated.

12. It was indicated by the said Bank that all the Branches were advised in the month of September 1985, by the Central Office, to forward the names of all persons, who have completed 180 days actual service on casual basis, for enabling them to appear for written tests for recruitment of sub-staff, early in the month of February 1986 and as the workmen concerned had not so completed the stipulated period of 180 days by September 5, 1985, their names could not be forwarded for the written tests by the respective Branches, so, the question of calling them for written tests, violating the Central Office directives, did not arise at all; more particularly when, the employees concerned had not fulfilled the eligibility criteria at the relevant time. The eligibility criterion, the said Bank has stated, will appear from Ext. W-1 which is also marked as Ext. W-2 and W-5. It has been agreed that Sri Tilak Lama and Sagar Chandra Roy, who had the eligibility qualifications, appeared in the Written Tests for further absorption and Sri Dipak Lama was absorbed after 240 days of work. It was the case of the said Bank that the recruitment/appointment in the permanent category of the said Bank, is governed by Rules/Regulations, conventions and procedure adopted on all India basis, through examinations and on the basis of the qualifications as indicated. So, it has been stated that the Management of the said Bank, had nothing to do with the absorption of the concerned employees of this Reference, as they were not eligible for the same. The said Bank has submitted that they have acted absolutely in a bonafide and justified manner and as such, no intervention or any interference by this Tribunal, should be made and if made that would be unwarranted, unjustified and contrary to the proper functioning of the managerial discretions and decisions, in accordance with law. Whether and if at all, the employees concerned were and are eligible for appointment/absorption as claimed, will certainly, in my view depend to a very great extent, on the construction and interpretation of Ext. W-1.

13. Without waiving the above exceptions and statements, as made, the said Bank has dealt with in serialism, the statements as contained in several paragraphs of the written statement of the said Union and has claimed that the Reference in question, be rejected.

14. The workmen concerned deposed as WWs, 1, 3 and 2 respectively and the evidence of the Management was tendered through MWs 1, 2 and 3.

15. From the evidence as recorded, it will appear that MW-1 Niranjan Lodh has stated that, no appointment letters were issued to the concerned workmen and no service records were available in respect of Sarbasree Pyne and Goswami and similarly, no letters of termination were issued in their cases, as they were casual workers. Regarding any letters being issued to the abovementioned employees, the evidence of MW-2, Sri Haridoss Goswami was the same and he has further stated that in the concerned Bidhan Market Branch there was also no service records of temporary employees like Sri Pyne. He has also agreed that no termination letters or any notice for 14 days were issued to the employees under consideration. Such non issuance of any appointment letter in respect of Sri Balmiki was also stated by MW-3

Sri Jiten Mohanlal Moniar, apart from indicating that the said Sri Balmiki was not a permanent employee and so, no Register was maintained in respect of his employment and no notice of 14 days, was served upon him. Mr. Bhunia submitted that above evidence was also corroborated by the employees concerned, on being examined. It would appear that WW-1 agreed that he was not in the employment of the said Bank in 1981 and 1982, yet he used to attend the Bank every day and was not given employment by the said Bank. He has of course claimed to have been engaged for 255 days in four years from 1983 to 1986. He was not called at the interview and was retrenched on the basis of verbal order. The days as claimed by this witness in which he was engaged as above, were of course not supported by any legal evidence. But, there is not much difference as the said Bank has stated that he was engaged for 203 days. He has of course stated that after his retrenchment as aforesaid, others were engaged. He has agreed to have been engaged as casual worker and received his due wages and furthermore, on all the occasions, he was engaged as substitute in place of regular employees. It was his case that as casual employee, he used to work as Peon. His statements regarding the days of engagements were not consistent. He has claimed to have been paid through Benami vouchers, a new and astounding case, about which he has deposed. The vouchers as produced and marked on admission showed that this witness was really employed on casual basis.

16. WW-2 Munnalal Balmiki has deposed that he used to get wages on daily basis. He worked upto May 2, 1987 and was not paid wages for Sundays and National Holidays. He was not given any letter of termination and as casual Safai Karmachari, he was engaged in the vacancies of other Safai Karmacharis. He spoke about an application, on the basis whereof, he was employed, but, could not produce a copy of the same. He has also agreed to have received his due wages for the days, he has worked. This evidence in respect of the days of his engagements as above, were not consistent and convincing. He has stated that his name was not enlisted in any Employment Exchange. It was his case that he was engaged for 182 days and that was also the case of the said Bank.

17. WW-3 Bishwanath Goswami's evidence was that, he worked for three days from May 22, 1984 and was not given any appointment letter. He has said to be knowing about the Circular Exhibit W-1, which as stated earlier, was also marked as Exts. W-2 and W-6. He has agreed to have received payments on signing vouchers and has stated that his name was registered in the Employment Exchange. He has further stated that juniors to him were preferred in the matter of employment. He has duly received the payments for the days of his engagements as casual employee and was a Class-IV staff, who are not cammen staff, although he has said, Sagar Roy was a Cammen employee and was engaged in his place. On the basis of his own evidence, such statement is difficult to be believed. His statements regarding the days of engagements were not duly established by any legal evidence. He has said to be not a member of any Union. He has claimed that his name was sponsored by the Employment Exchange in 1984, 1985 and 1986 and he was given work in the first two years. From Exts. M-3 and M-4 as produced and proved through MW-1, the engagements of Sarbashree Pyne and Goswami would appear and there are or has been no contrary legal evidence available. It was pleaded by him that the abovementioned employees were not appointed, as they had not put in 180 days work in terms of the Circular Ext. W-1 and the test was held in February 1986. The witness was not certain about the particulars of the five employees as indicated earlier. But, he was certain, no appointment letters were issued to them and no also termination letters, as they were casual workers. MW-2 has testified to the list of engagements of Sarbashree Pyne and Goswami and the other three employees through Exts. M-5, M-6, M-7 and M-8 and claimed them to be prepared by him on the basis of the records, as maintained. The evidence regarding engagements could not be differed or proved substantially to the contrary, by any legal evidence. But, it is certain, on the basis of his evidence, when Sarbashree Pyne and Goswami were not allowed to work, some other persons were employed. He could not substantially establish, why the above two employees were not allowed to appear in the test.

18. The evidence of MW-3 is relevant on the dates of engagements of Sri Munnalal Balmiki. The engagements of Sri Balmiki have been indicated, apart from indicating that he received wages through vouchers for the days he worked, duly, and at daily wage rates, but was not given any appointment letter for his engagement and he was not a permanent employee and as such, he was not provided with any appointment letter. Munnalal, according to the witness, was paid both on vouchers and in cash. The workings of Munnalal will appear from Exts. W-9 and W-10. The witness has said that he did not recommend the case of Munnalal for permanent engagement. The total workings of Munnalal will appear from Ext. M-10. There was no specific evidence, if Bistu Senapati and Indrajit Nayak were actually engaged or absorbed permanently. They were also not before this Tribunal.

19. The first submissions of Mr. Bhunia, was on the unfair labour practice as adopted by the said Bank and to establish that, he relied on the evidence as recorded earlier, apart from relying on paragraphs 495, 522(4) and (5) of the Award. Paragraph 495 of that Award indicates that on a candidate's appointment as a temporary employee or probationer or a permanent member of the staff, the Bank shall give him a written order, specifying the kind of appointment and the pay and allowances, to which he would be entitled to and that, such a written order, shall be given on the appointment of a part-time employee also and paragraphs 522(4) and (5) of that Award indicate as under :

Paragraph 522(4) :—The service of any employee other than a permanent employee or probationer may be terminated and he may leave service after 14 days notice.

Paragraph 522(5) of the said Award postulates that any order relating to discharge or termination of service, shall be in writing and shall be signed by the Manager and a copy thereof, shall be supplied to the concerned employee.

20. It should be noted that paragraph 495 as above, speaks of temporary, probationer and permanent employee of a Bank, apart from mentioning about appointments of part time employees. Thus, one of the question would be, if the casual employees, which the employees here are, would come within such category, since they are not either admittedly permanent or probationer or temporary employee and casual employees have not been mentioned, indicated or defined. The fact that the employees here were appointed for casual purposes and works, was not practically in dispute and it was the only case of the said Union that they were so employed, for works, which were really permanent in nature and character. The word "casual" means, subject to, resulting from or occurring by chance, occurring without regularity, occasional employed for irregular periods. Thus, anything which is in the area of expectancy and can be foreseen, cannot be amply described as casual, as observed in the case of Rumanath Chettiar Vs. Commissioner of Income Tax I.L.R. 1963 Mad. 546. The word "Casual" as indicated in the case of Lalithamma I. R. Kasman, A.I.R. 1966 Mys. 178, actually means subject to or produced by chance or accident or fortuitous. Mr. Bhunia, of course contended that such termination of services as in this case, without any written orders, were bad and illegal, in terms of the determinations in the case of Central Bank of India Vs. State of Jammu and Kashmir, 1968 (2) I.L.J. 646. The employee in that case was a clerk appointed on probation for six months and before the expiry of that period, he was served with a cash order equivalent to one month's salary, to which he objected. In the Reference as made, the Union contended the order to be unjustified, arbitrary and illegal, as no enquiry was held in the alleged misconduct and inefficiency, for which, the employee was charged. The termination was found by the initial authority to be not justified and accordingly ordered his reinstatement. Against such determination, a Writ Proceedings as initiated by the Bank was dismissed and on further appeal, it has been observed amongst others that, if the Industrial Court is satisfied that the order is punitive, that it is mala fide or it amounts to victimisation or unfair labour practice, it is competent to set aside the order and direct reinstatement. It has also been indicated that even when the contract of service provides for termination of services after

a month's notice, it would be open to the Industrial Court, when that termination is challenged, to go into the question of bonafide. According to Mr. Bhunia, thus, the said Bank, should have issued appointment and termination letters to the concerned employees and alternatively, before their terminations, the employees concerned should have been given at least 14 days notice. The above submissions of Mr. Bhunia, thus admit the position that the said employees were not, at least given any appointment letters. He has of course challenged, such non-issuance of appointment letters in the facts of this case, to be not bonafide and proper.

21. The word "casual" according to Oxford Dictionary means due to chance, undesigned, random, not regular or permanent or calculable, carrying with circumstances and according to Webster's the same means, resulting from or occasioning by chance. Thus, on the basis of the Dictionary meaning of the said word, the same will neither be permanent nor temporary or probationary and workers of that category, would belong to and form a separate class all by themselves and having such characters of employment, as indicated earlier. So, we shall have to see and find out, if the employees concerned in this case, can maintain a claim, to have the right to be considered for appointment for any other reasons whatsoever or for any other exceptional or extenuating circumstances, which may include necessary and required number of days of their employment, which will bring them, within the purview of "any other employee", including part-time employee, as mentioned and indicated in paragraph 495 of the Saxtri Award and will give them a right to be considered for engagement in future. On the basis of their nature and character of employment, the employees concerned here, were and are nothing but casual employees and no malafide intention or any ulterior motive in dispensing with their services have been established or proved.

22. The above observations and findings take us to the second limb of the submissions of Mr. Bhunia, which was on the question of the dates of initial appointment and the determining factor according to him, would be, who amongst Sarbasree Abhijit Pyne, Biswanath Goswami, Munnalal Balmiki, Tilak Lama and Sagar Roy, came and joined the services of the said Bank, first or earlier. According to him, in Ext. M-9, the said Bank has disclosed the dates of engagements of all, excepting Dipak Lama and has stated that, his case was one of fresh appointment. It should be noted that neither Dipak Lama nor Tilak Lama or Sagar Roy are parties to this proceedings. Sri Munnalal Balmiki was admittedly employed as Safai Karmachari which Sarbasree Pyne and Goswami were not and as such, their cases cannot be equated or placed in the same footing with others or the persons, who were claimed to have been appointed in such categories.

23. Mr. Bhunia, referred to Ext. M-9 and indicated that the said Bank, without giving the date of joining of Dipak Lama and describing him as a fresh appointee, has sought to mislead this Tribunal. He pointed out that Sarbasree Pyne, Goswami, Tilak Lama and Sagar Roy were appointed on May 19, 1980, May 22, 1984, May 2, 1981 and June 9, 1982 respectively and according to him, Dipak Lama was admittedly junior to them and that is why, his case has been shown as a fresh appointee, as mentioned above. On the basis of evidence as available, the dates of initial engagements of the five employees as mentioned above, were not very clear and explicit, but they were vague and similar would also be the case of Munnalal Balmiki who according to Mr. Bhunia, was appointed on July 28, 1986 and earlier than Sarbasree Indar Nayak, Bistu Senapati and Rajesh Balmiki.

24. While on computation of the number of days worked by Sarbasree Abhijit Pyne, Biswanath Goswami and Munnalal Balmiki, on a reference to Ext. W-5, M-9, M-5, M-3, M-4 and M-13, Mr. Bhunia claimed that there was no doubt or any dispute that those employees had worked for 182 days or even more than 240 days in the case of Sri Pyne. It was his specific allegation that the continuity of service which was said to have been given to Sarbasree Dipak Lama, Sagar Roy and Tilak Lama, were vague and arbitrary and certainly by such action, Sarbasree Pyne and Goswami, were denied their rights to be employed or considered for employment earlier than those as mentioned.

25. From the pleadings and evidence, it would appear that Sarbasree Pyne and Goswami were not called to sit for the written test, as they had not completed 180 days of service and Mr. Bhunia contended that both the said employees had worked more than 180 days, before the examination was held and the computations as made by the said Bank, regarding the number of days worked by them, were wrong and the computation as made on the basis of the Circular dated September 19, 1985 (Ext. W-1) cannot be construed to be the effective date of the said Ext. W-1, for counting the number of working days. It was specifically claimed by him that the said Circular was not retrospective, but was prospective and since the concerned examination was held in February 1986, both the employees as above, should be deemed to have worked for excess of the requisite number of days, yet, they were not called to sit for the written test, illegally, arbitrarily and unjustifiedly. In my event, it was claimed by Mr. Bhunia that the said circular cannot be a bar in the matter of regularising the services of those, who were already recruited by the said Bank and in any event, the same was applicable in the cases of fresh recruits and not to those, who were recruited earlier. While on the point, Mr. Bhunia relied on the determination in the case of Sudarson Das Vs. State of West Bengal & Ors., 1991(1) Calcutta Law Times 456. The petitioner in that case, had served the concerned Bank for 257 days without any break, as a sweeper, on daily basis, and challenged the action taken against him, in a Writ proceeding, wherein the concerned Bank claimed that they had to adhere to the policy for recruitment of part-time and full-time sweepers and it was held that they having once appointed the petitioner employee, heldout future hope and a dream, which should not be allowed to be shattered, taking shelter under the Recruitment Policy, which was applicable in the case of first appointment and would not take away the right of a person, who has already rendered services for a number of days, against the vacancies in the Bank, at the time of his initial appointment. This determination will not really help Mr. Bhunia and in fact, is distinguishable in the facts of this case, as the employee there, served without any break and here the services of the employees concerned were not continuous. It must also be remembered that regularisation of the employees concerned, were not in issue in this Reference.

26. Mr. Bhunia claimed further that from the evidence as available, it can be conclusively proved that both Sarbasree Pyne and Goswami had joined in substantive posts, which they filled up at the time of their initial engagements and no appointment letters were issued, stating that they were working in the place of permanent incumbents on leave and, if they had any knowledge about such or any onerous condition, perhaps they would not have accepted the office. It was pointed out by him, MWs. 1 and 2 could not also name the permanent staff, in whose place the abovementioned employees were taken in. But such submissions are irrelevant on the basis of the engagement of the employees concerned. Mr. Bhunia further contended that had it been the procedure to engage temporary staff only, in the cases of leave vacancies, Sri Pyne, who was first and foremost employee to come amongst the five employees as mentioned above, should have been preferred first and even before Sarbasree Dipak Lama, Tilak Lama and Sagar Roy. He further pointed out that MW-2 deposed, to have remembered that Sarbasree Pyne and Goswami were not allowed to work in the Branch, when some other employees used to work there. Mr. Bhunia further pointed that a large number of recruitments, may be 200 or more, in Class-IV staff, were made, on the basis of written examinations held in February 1986, which conclusively prove Sarbasree Pyne and Goswami were engaged against substantive vacancies and thus, in terms of the observations in the case of Satyanarayan Sarkar & Ors. Vs. Mineral Development Corporation Ltd. & Ors., AIR 1980 SC 2054, the action as taken, was absolutely void invalid and irregular. In that case, regularisation of daily rated workers, in terms of schedule 2 item 6 of the said Act, came up for consideration and the Supreme Court has observed that when there is clear finding supported by evidence regarding absence of vacancies for absorption of the daily rated workers, who for quite some times continued in the rolls and paid inspite of absence of work, directions for absorption, cannot be given. On the basis of the above determinations, it was Mr. Bhunia's contention that the principle of regularisation of the services of daily rated workers and payments to them, a pay equal to

that of a regular workman arises only when daily rated workers do the same work as regular workers and there being vacancies available for them, the employees here were not absorbed against such vacancies or not even paid the equal pay for the period, during which such workers were taken in. The question of regularisation, not being in issue here, the above determination will not help and assist Mr. Bhunia.

27. It was submitted by Mr. Bhunia that, so the said Bank in the case, has grossly violated the provisions of Section 25H of the said Act, in instituting retrenchment of the services of Sarbasree Pyne and Goswami, while recruiting Dipak Lama, Dilak Lama and Sagar Roy and other two hundred persons. Same and such submissions were also made in respect of Munnalai Balmiki, as according to Mr. Bhunia, he was also retrenched from services, while Sarbasree Bistu Senapati, Inder Nayak and Rajesh Balmiki and 25 others, were recruited. It was further submitted by Mr. Bhunia that the actions or inactions of the said Bank in this case, were devoid of principles of equity, equality, rationality and the steps as taken, were contrary to the observations of the Supreme Court in the case of Inder Pal Yadav & Ors. Vs. Union of India & Ors., (1985) 2 S.C.C. 648, which has indicated that absorption should be, in order of length of continuous service and the principles of last come first go or in the reverse, first come last go under Section 25G of the said Act, should be adhered to and followed. Such principle according to Mr. Bhunia, was further supplemented by the observations of the Supreme Court in the case of Daily Rated Casual Labours employed in P & T Department through Bharatiya Dak Tar Mazdoor Manch, (1981) 1 S.C.C. 122. That determination, do not really and effectively help in this case, as the same was really on the question of equal pay for equal work. Mr. Bhunia of course claimed that the said determinations will be available in this case, because, the employees in this case, have alleged hostile discrimination. In that case, there was also evidence that in terms of the Scheme as available, the casual labours there were continuously working in the department for more than one year, which evidence is not readily or appropriately available in this case. The above determinations will not thus be applicable in this case, as admittedly, there is also no evidence that the employees concerned were in continuous service as casual employees or they were continuously working in the departments of the said Bank for more than one year. These findings would get support from the particulars of workings of the employees concerned, as indicated earlier. The question or case of hostile discrimination as argued, cannot, in my view, be considered, in view of the admitted facts that the persons, who have received benefits on such or any discrimination, are not before this Tribunal and the evidence as available on the point is not that clear and explicit.

28. Mr. Basu, appearing for the said Bank contended that on the basis of the pleadings and evidence as available, it has been established in this case beyond doubt that, the employees concerned were casual employees, appointed for a limited period of work, which were essentially temporary in nature and as such, they were paid through vouchers for the days, they have worked in any year. He agreed that the terms of service and conditions of employment of the employees concerned, like all other Bank employees, are guided and governed by the Awards as mentioned earlier and as modified by Bipartite or other settlements from time to time and it is explicitly clear that there are provisions for temporary and casual employees, for meeting the exigencies of service and for that, the said Bank, from time to time employed and still employs casual employees, when permanent employees are absent on leave or otherwise, creating temporary vacancies.

29. It was submitted by him further that such policy of casual engagements, as made in this case, was bonafide followed and made for requirements of the said Bank and that too, in compliance with the service conditions of the Bank employees. As such, Mr. Basu claimed that the said Union is estopped from questioning such casual employment, since such casual employment, would be lawfully maintainable and those employees cannot ordinarily claim permanency or continuity or as a matter of course. The grievances/demands of the said Union, representing the said employees, according to Mr. Basu, were not based on any legal right or basis and there was no breach or violation of such or any right. In

such view of the matter, he claimed that the demands of the employees concerned here, were without any legal basis and as such, they should be rejected.

30. The prayers as made by the said Union on the interpretations or applications of Section 25F and 25H of the said Act, were claimed to be misconceived, as according to Mr. Basu, there was no evidence, legal or otherwise, to justify absorption as required under Section 25H of the said Act. The very foundation of Section 25F of the said Act, according to Mr. Basu, postulates, as condition precedent to retrenchment of the workman, as it has been specifically indicated that "no workman in any industry, who has been in continuous service for not less than one year under an employer, shall be retrenched by that employer until...". It was submitted by him that from the entire records of this case, it would not appear that any legal evidence was adduced by the workmen concerned that they or any of them, had been in continuous service for not less than one year. On the contrary, Mr. Basu has indicated, there is un rebutted and unchallenged evidence to the effect, that the concerned employees have not worked for such temporary periods as claimed and he specifically submitted that in the facts of this case, the question of violation of Section 25F or 25H of the said Act, would not thus arise. He claimed that both the said sections are clear, explicit and categorical and there has been no misinterpretation or misconstruction done by the said Bank as alleged by the said Union and which fact again, they have not been able to establish. Applying the terms of Section 25F of the said Act, I think that the provisions therein, will not apply in this case, as none of the employees were on such continuous service as required in the section. It should also be noted that there is also no legal evidence available that the employees concerned have rendered work for 240 days during a period of 12 calendar months, in the year, immediately preceding the alleged retrenchment and also in respect of every year of service.

31. In respect of the claim for absorption of the employees concerned, Mr. Basu stated that the said Bank was obliged to follow the procedure as laid down from time to time by the competent authority and he relied on the Circular of September 6, 1985 as exhibited (Ex. M-1) and indicated that on that basis, the casual employees could sit in a written test, provided they were sponsored through respective Employment Exchanges, after completing 6 months of actual service and according to him, it would be clear from the evidence as led that none of the concerned casual employees, qualified themselves to be eligible for the written test or that, they have qualified by participating in such test for further consideration, in accordance with the service conditions applicable to them for absorption, as permanent employees. As such, Mr. Basu further claimed that it cannot be denied or disputed that the employees concerned have not been able to lead any evidence, in respect of their claims for absorption in permanent categories, validly or bonafide. He also claimed that the said Union, utterly failed to make out any case or substantiate their claims, as alleged now.

32. Apart from the above, Mr. Basu claimed the Reference to be based on misleading claims by the said Union and more particularly, since the issue in the Reference was not only hypothetical and speculative, but the same also suffered for non-application and misapplication of mind, as there was really no termination of services of the concerned employees.

33. The notification regarding recruitment of Sub-staff has been disclosed amongst others as Ex. W-1, which indicates that, firstly, persons drawn from Employment Exchange on 90 days temporary basis, should be given preference for recruitment as subordinate staff in the Bank, when the process takes place. Thereafter and secondly, persons taken on temporary basis from other than Employment Exchanges, on their completing 6 months' actual service in the Bank, should be given preference to appear in the Sub-staff recruitment test, as and when held and the above norms were and are applicable to the cases of existing employees only. No earlier specific date of operation of the Circular has been mentioned, so the same is to be deemed to be effective and operative from the date of the said Exhibit W-1 which was

September 19, 1985 and thus, as submitted by Mr. Bhunia, the said exhibit was prospective and not retrospective. It should also be noted that the said Ext. W-1 has not indicated, if the said 6 months workings should be in a year or in the total engagement or an employee, spread over in more than one year. In the absence of such indication, it cannot be held and observed that such workings must be in a year. The employees concerned in this case, were engaged earlier than the notification Ext. W-1 and since the same is not retrospective, so the employees concerned in this case, were entitled to be called at the written test. They were not admittedly called at the written test, but, that will not mean that, they will be automatically entitled to be appointed, absorbed and confirmed, more particularly when, the idea behind the holding of a written test, for employment in the subordinate services of the Bank, as required, is necessary and wholesome, even if, the said Ext. W-1 has been indicated above, to be not retrospective. I think, even if the said Ext. W-1 was not strictly applicable for the employees concerned, yet, they cannot and should not be absorbed automatically, as a minimum standard of qualification is to be maintained and required for the engagement of Sub-Staff. As the said Ext. W-1 has not mentioned or indicated that employees, for consideration, to appear in the necessary test, should be at least put in 180 days of service in a year, so, the employees concerned in this case, were entitled to be called for appearing at the necessary test, as they have admittedly put in more than 180 days, may be in more than one year. Thus, even on the policy as indicated in Ext. W-1, although the same was not retrospective, they could have been given the opportunity to appear in the test as held, on their independent right. But, one thing is certain that, since there is no provision that such employees should be confirmed and absorbed automatically and as stated above, some and necessary test, is required, to check and maintain the minimum standard of a subordinate staff i.e. to find out if they are suitable, they could be asked to appear in the tests for that purpose. As such, I feel that they cannot be directed to be engaged and absorbed automatically and they should be given a chance to have their suitability for the post, tested and established and if they are successful, they should be appointed.

34. On the basis of the pleadings, evidence as available and the findings as made, the cases of the said employees, cannot be called or termed as retrenchment, as such, their claims for retrenchment compensation or the invalidity of the actions as taken, without paying such compensation, cannot be considered and accepted and as such or as indicated earlier, there was no infraction of Section 25F of the said Act and as such also, Section 25G of the said Act, will not apply and consequently, Section 25H will not also have any application in this case.

35. I have indicated earlier that regularisations of the employees concerned were not in issue in this Reference and as such, such case or claim as sought to be made herein, cannot authorisably be gone into by this Tribunal.

36. Even inspite of my views as expressed earlier, I feel that because of the days, the employees concerned were engaged, which were admittedly more than 180 days, they would be entitled to have their cases for appointment reconsidered and as such, they in my opinion, should be called for necessary tests, as and when the said Bank will decide to recruit subordinate staff, which, admittedly they will require. That being the position, I indicate that hereafter, when any decision will be taken by the said Bank to have the employees of subordinate staff recruited or appointed, cases of the employees concerned in this, should be taken into consideration in the manner as indicated. I make the order as indicated in the Award, as I feel that nothing should be said which would directly, indirectly or in any way interfere with the services of those, who are not before this Tribunal.

37. For the views as above, this Reference is answered in the affirmative and to the extent as indicated earlier.

This is my Award.

Dated, Calcutta,

The 30th October, 1992.

MANASHU NATH ROY, Presiding Officer

नई दिल्ली, 22 दिसम्बर, 1992

का. घा. 98.—औद्योगिक विवाद प्रविवरण, 1947 (1947 का 14) के प्रांगण 17 के अनुसूच्य में, केन्द्रीय सरकार, यूनियन बैंक आफ इंडिया के प्रभुत्व के नरद विवाद की बार उनके कर्मकारों के बीच अनुसूच्य में निर्णित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक प्रविकरण, चण्डीगढ़ के नरद को प्रभावित करने हैं, जो केन्द्रीय सरकार की 21-12-92 को प्राप्त हुआ था।

[संख्या एन-12612/104/86-डी 2 (ए)]

बी. के. वेणुगोपालन, डेस्क अधिकारी

New Delhi, the 22nd December, 1992

S.O. 98.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Union Bank of India and their workmen, which was received by the Central Government on 21-12-92.

[No. L-12012/104/86-DII(A)]

V. K. VENUGOPALAN, Desk Officer

ANNEXURE

BEFORE SHRI ARVIND KUMAR, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH

Case No. J.D. 96/88

Jit Singh & Piara Singh Vs. Union Bank of India

For the workmen : Shri Karam Singh.

For the management : Shri Gopal Mahajan.

AWARD

Central Government vide gazette notification No. L-12011/8/88-II(A) dated 12th December, 1988 issued U/r 10(1)(d) of the I. D. Act 1947 referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Union Bank of India in terminating the services of S/Shri Jit Singh and Piara Singh and not considering them for further employment U/S 25-H of the I.D. Act, 1947 who were appointed as security guards is justified? If not to what relief are the concerned workmen entitled?"

2. In the statement of claim filed by Piara Singh and Jit Singh it was claimed that they are working as special police officer with the Respondent at Rs. 30 per day w.e.f. 2-9-1985 and 1-8-85 respectively. It is further pleaded that their services were terminated illegally on 3-4-1986 and 10-1-1987 respectively without charge sheet enquiry and show cause notice. It is further alleged that their services were terminated due to their trade union activities and many juniors are still in the employment of the respondent bank and prayed for reinstatement with continuity of service with full backwages.

3. The claim of the petitioner was contested by the respondent management. Preliminary objection has been taken that the petitioners were engaged by the Punjab Police Department through Supt. of Police in pursuance of the minutes of meeting held on 27-3-1984 circulated vide letter dated 28-3-1984 by the Inspector General of Police C.I.D., Chandigarh and then district police authorities was the necessary party and other objection was taken that the petitioners are not workman within the meaning and the expression as

contained in the Industrial Disputes Act, 1947. On merits it was pleaded that the petitioners were never employed in the service of the bank. However their services were made available by the Punjab Police authorities to the banks to maintain security of the Banks in the State of Punjab in compliance of the minutes of the meeting held on 27-3-1984 between banks officers and advisor to Governor Punjab. It is further alleged that in pursuance of the discussion made in the meeting banks authorities informed the Senior Supdt. of Police on 17-5-1984 to depute special police officers and asked for the amount to be paid to such S.P.O.s so that it may be deposited in the treasury. It is further pleaded that the police authorities made available service of special police officers to tide over the difficult law and order situation. Therefore, there can not be a termination of any S.P.O. by the bank authorities and prayed that the claim of the petitioners is false and there is no merit and be dismissed.

4. Replication was also filed in which the stress was laid that the appointment letter is not a decisive factor for relationship of master and servant. It is further pleaded that the petitioners are governed by the rules of the respdt. bank and are the employees of the respdt. It is further stressed that they are not acquainted with the minutes of the meeting held on 28-3-1984. It is further pleaded that they never served the police deptt. from the period they were engaged by the respdt. Moreover they were paid by the respdt. monthly wages and thus employees of the Respd. bank.

5. In support of his case the petitioners examined Jit Singh as WW1 who tendered his affidavit as W1 in evidence. In cross-examination he admitted that he received no appointment letter from the bank. He has also admitted that no letter from the bank was received for calling him for interview. It is also admitted in cross-examination that the bank authorities had not provided them any arms and ammunition.

Respd. management tendered in evidence documents Ex. M1 Memorandum dated 28-3-1984 alongwith minutes of meeting dated 27-3-1984 held by the Advisor to Governor Punjab with the senior officers of the banks. Ex. M2 is the letter written by the Regional Manager to the Inspector General of Police for deputing special police officers alongwith the annexure showing requirement districtwise. Ex. M-3 the staff circular. Ex. M4 a letter addressed from SSP to Branch Manager. Ex. M5 is the specimen of recruitment order of special police officers.

6. I have heard both the parties and gone through the evidence and record on the file.

7. Learned counsel appearing on behalf of the petitioners has argued that the terminations of the services of the petitioners have been done by the Respd. management in violation of section 25-F of the I.D. Act 1947 as Jit Singh had put in more than 240 days and Piara Singh had put in 214 days and has argued that they were the workman under the employment of the Respd. bank and prayed for reinstatement with back wages. There is no force in this contention. It is a simple case wherein the right of deteriorating law and order situation in public state it has been thought fit the police department to provide SPOs at vulnerable branches and their honorarium was left to be paid by the bank branches so guarded. In this connection Ex. M1 is the memorandum issued by the Inspector General of Police to the senior Supdt. of Police in the State of Punjab, the minutes of meetings of the bank officers held with the Advisor of Governor Punjab in connection with the deployment of the special police officers at the vulnerable branches (banks) which stipulates that various instructions and conditions of which minutes of meeting is that for all the branches guards will be provided by the district sundt. of police after selecting suitable ex-servicemen who will be appointed as SPO in terms of Section 17 of the Police Act and the manager of each branch will arrange to pay to each sp. honorarium @ Rs. 15 per

day for the full period of 30/31 days in the month. It is also mentioned in the meeting that will be made plain to all individuals employed on this duty that they are not regular employees of the bank and should not, therefore, harbour in their minds any claim for permanent employment or other concessions which are available to Bank employees. Consequently upon this meeting Regional Manager had asked I. G. Police vide Ex. M-2 indicating the branches where SPOs are to be employed in the branches in the annexure. It is in this context the petitioners are employed in the said branch. Ex. M5 is the specimen appointment letter of one Kam Singh (not the petitioner in this case) which shows recruitment was done by Superintendent of Police as SPO @Rs. 15/- per day. It was further indicated that this honorarium will be paid to him during his posting only by the concerned bank. However the management has referred the various provisions of Police Act 1952 which envisages appointment of SPO (Special Police Officers) at the cost of individual U/S 13 of the Police Act which provided that the district superintendent of police and officer senior to him on the application of any person depute any number of police officers at the charge of the person making application. However it has been admitted by Jit Singh that he did not receive any appointment letter from the bank. Thus there is enough evidence on the file to show that the present petitioners were appointed as SPO by the police authorities in context of Section 17 & 18 of the Police Act and with reference to the minutes of meeting held by the bank authorities with the Advisor to the Governor of Punjab as referred above under Ex. M1 and they have been deputed to guard the bank branches and the bank management has agreed to pay them as honorarium @ Rs. 15 per day. The present petitioners never applied to the bank and the respdt. management never issued any appointment letters to them. There is no relationship of master and servant between the bank and the petitioners. There is nothing on the record to indicate that any regular cadre of special police officers was created by the banks. There was no posts as such sanctioned by the bank. The petitioners were certainly adhoc employees of the police department and not the employees of the Respd. bank. Thus there is no question of termination of services of the petitioners by the Respd. bank.

8. In view of the discussion made in the earlier paras the petitioners are certainly not entitled to any claim. The reference is answered accordingly.

ARVIND KUMAR, Presiding Officer

नई दिल्ली, 30 दिसम्बर, 1992

क. आ. 99-—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की प्रा. 17 के अन्वय में, केन्द्रीय सरकार, बैंक आदि इष्टि के प्रवर्तन के संबन्धित निरोधकों और उनके कर्मचारियों के बीच, अन्वय में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानून के पंचपट को प्रकाशित करती है. कि केन्द्रीय सरकार को 22-12-92 को प्राप्त हुआ था।

[संख्या एन-12012 /25 /92 आर आर बी-11]

बी. के. वेणुगोपालन, डेस्क अधिकारी

New Delhi, the 30th December, 1992

S.O 99—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of India and their workmen, which was received by the Central Government on 22-12-1992.

[No. 12012/25/92-IR(B II)]

V. K. VENUGOPALAN, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
AT CALCUTTA

Reference No. 40 of 1992

PARTIES :

Employers in relation to the management of Bank of India.

AND

"Their Workmen

PRESENT :

Mr. Justice Manash Nath Roy,
Presiding Officer.

APPEARANCES :

On behalf of the Management--Mr. L. D. Gupta, Industrial Relations Officer.

On behalf of Workmen--Mr. P. Banerjee, Advocate.

STATE : West Bengal

INDUSTRY : Banking

AWARD

By Order No. L-12012/25/92-IR. (BII) dated 24-6-1992, the Government of India, Ministry of Labour, referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Bank of India, not regularising to Shri Khiren Das in the category of Class-IV employee of the bank is justified or not ? If not, to what benefit is the employee entitled ?"

2. When the case is called out today, Mr. Banerjee, on instruction stated that his client is not willing to proceed with this Reference. This was not opposed by the employer, such being the position, the Reference is dismissed without going into the merits.

This is my Award.

MANASH NATH ROY, Presiding Officer

Dated, Calcutta,

The 2nd December, 1992.

नई दिल्ली, 30 दिसम्बर 1992

का. प्रा. 100--औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, पंजाब एण्ड सिन्ध बैंक के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निश्चित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पक्षपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-12-92 को प्राप्त हुआ था।

[संख्या एन-12012/301/87/डी-II (ए)]
जी. के. वेणुगोपालन, डेस्क अधिकारी

New Delhi, the 30th December, 1992

S.O. 100.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Punjab and Sindh Bank and their workmen, which was received by the Central Government on 24-12-92.

[No. L-12012/301/87-DII(A)]
V. K. VENUGOPALAN, Desk Officer

ANNEXURE

BEFORE SRI ARJAN DEV PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, PANDU NAGAR, KANPUR

Industrial Dispute No. 34 of 198

In the matter of dispute between :

The General Secretary,
Punjab & Sindh Bank Staff Association,
C/o Punjab & Sindh Bank,
Estop Hall Dehradun.

AND

Regional Manager,
Punjab & Sindh Bank
B-6 Rampur Garden Bareilly.

AWARD

1. The Central Government, Ministry of Labour, vide its notification No. L-12012/301/87-D-2(A) dt. nil has referred the following dispute for adjudication to this Tribunal :—

Whether the action of the management of Punjab & Sindh Bank in terminating the services of Sri William son of Sri Sunder Lal and not considering him for further employment while recruiting fresh hands under section 25-H of the I.D. Act is justified ? If not, to what relief is the workman entitled ?

2. On 12-11-92, the application moved on behalf of the workman by one Sri D. D. Mehia, was disposed off, on the observation that it is nothing but an attempt to delay the proceedings of the case. None appeared from the side of the workman nor the workman appeared for his cross examination. In this case first date for the cross examination of the workman was 11-12-90, therefore the case was adjourned on the ground or the other. The case cannot be allowed to linger on in the manner stated. To me it appears that the workman is not interested in prosecuting the case any more.

3. From the above, it appears that the workman is not interested in the case and as such a no claim award in the case is given against the workman.

4. Reference is answered accordingly.

ARIAN DEV, Presiding Officer

नई दिल्ली, 30 दिसम्बर, 1992

का. प्रा. 101--औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, इण्डियन ओवरसीज बैंक के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निश्चित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बम्बई के पक्षपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-12-92 को प्राप्त हुआ था।

[संख्या एन 12012/389/89/डी-II (ए)]
जी. के. वेणुगोपालन, डेस्क अधिकारी

New Delhi, the 30th December, 1992

S.O. 101.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bombay as shown in the Annexure in the industrial dispute between the employers in relation to the management of Indian Overseas Bank and their workmen which was received by the Central Government on 21-12-1992.

[No. L-12012/389/89-D.II (A)]
V. K. VENUGOPALAN, Desk Officer

ANNEXURE

New Delhi, the 30th December, 1992

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL NO. 2, BOMBAY

PRESENT :

Shri P. D. Apshankar, Presiding Officer.

Reference No. CGIT-2/61 of 1992

PARTIES :

Employers in relation to the management of Indian
Overseas Bank

AND

Their Workmen.

APPEARANCES :

For the Employers—Shri S. G. Deshpande, Represent-
ative.

For the Workman—In person.

INDUSTRY : Banking

STATE : Maharashtra

Bombay, the 7th December, 1992

AWARD

The Central Government by their Order No. L-12012/389/89-D.II (A) dated 29-10-1992 have referred the following industrial dispute to this Tribunal for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 :

"Whether the action of the management of Indian Overseas Bank in dismissing from service Shri S. M. Sonawane, Clerk attached to Searock Hotel Branch, is justified ? If not to what relief is the workman concerned entitled ?"

2. While the reference was at the stage of filing the statement of claim by the workman, both the parties arrived at an amicable settlement and filed the memo regarding the terms of settlement, which are thus :

- (a) The workman will be reinstated without back wages and his pay will be fixed on reinstatement at the last drawn pay as revised upto date.
- (b) The workman will be entitled to continuity of service.
- (c) The workman will make good the loss of Rs. 2,157 sustained by the bank due to his wrongful acts.

3. I find that the said settlement is quite in the interests of both the parties. The workman himself admitted before me the correctness of the contents of the said settlement. The representative of the management also admitted the correctness of the contents of the said settlement. As such the said settlement is accepted by me, and the award is drawn in terms of the said settlement.

P. D. APSHANKAR, Presiding Officer

नई दिल्ली, 30 दिसम्बर, 1992

का. प्र. 102—औद्योगिक विवाद अधिनियम, 1947

(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, आंध्रा बैंक के प्रबंधन के संबंध में नियुक्त और उसके कर्मचारों के बीच अनुबंध में निश्चित औद्योगिक विवाद में औद्योगिक अधिकरण, हैदराबाद के पक्षों को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-12-92 को प्राप्त हुआ था।

संख्या एल-12012/18/87 डी-4 (ए)

बी. के. वेणुगोपालन, डेस्क अधिकारी

S.O. 102.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Hyderabad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Andhra Bank and their workmen, which was received by the Central Government on 22-12-1992.

[No. L-12012/18/87-D.IV (A)]

V. K. VENUGOPALAN, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT
HYDERABAD

PRESENT :

Shri V. Venkatachalam, M.A., B.L., Chairman.

Hyderabad, the 15th December, 1992

BETWEEN

The workman of Andhra Bank, Central Office, Hydera-
bad. — Petitioner

AND

The workman of Andhra Bank, Central Office, Hy-
derabad. --- Respondent

APPEARANCES :

Sri K. Rama Rao, Representative of the Workman, Joint
Secretary, Andhra Bank Employees' Union (Regd.)
Pavana Bhavan, Hyderabad.

M/s. K. Srinivasamurthy, G. Sudha, Council-for Res-
pondent.

AWARD

The Government of India, Ministry of Labour, New Delhi, in letter No. L-12012/18/87-D.IV (A) dated 16-11-1987 stated that the Central Government is of opinion that an industrial dispute exists between the employer in relation to the management of Andhra Bank and their workmen in respect of the matters specified in the Schedule hereto annexed.

And whereas, the Central Government considered it desir-
able to refer the said dispute for adjudication :

Now, therefore, in exercise of the powers conferred by clause (d) of Sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal Hyderabad. The said Tribunal shall submit its award in the said dispute within a period of 3 months in accordance with sub-section (2-A) of Section 10 of the said Act.

SCHEDULE

"Whether the action of the part of the management of Andhra Bank in terminating the services of Kum. Usha Rani, Clerk-cum-Typist w.o.f. 11-1-1986 is justified ? If not, to what relief is the workman entitled ?"

2. The said reference was taken on the file of this Tribunal and Registered as I. D. No. 58 of 1987. On behalf of the workman Joint Secretary, Andhra Bank Employees' Union, Hyderabad filed claim statement. The brief averments of the claim statement are as follows :

The petitioner was qualified and selected in the test and interview conducted by the Banking Service Recruitment Board in the year 1984 and she was allotted to Andhra Bank for appointment in the Bank Service in the clerical grade. The Petitioner submits that

she was given appointment orders by the Respondent Bank dated 1-4-1985 which was duly signed by the appointing authority in the Bank, i.e., Staff Manager. The petitioner submits that after due verification of all the relevant documents stipulated in the letter of appointment order she was admitted into service on 15-4-1985 as a probationary clerk in Staff Code No. 14170.

The Petitioner states that she was working in the Bank with utmost diligence, devotion and perfection to the best of satisfaction of the superiors and her superiors stated that she was a trust-worthy and hard working employee. Her probationary period of six months was about to be completed on 15-10-1985 but her probation was extended for another period of 3 months by the Chief Manager, Hyderabad branch through his letter dated 11-10-1985 w.e.f. 15-10-1985 on the ground that her confirmation was subject to medical fitness. The Petitioner further submits that as per provisions para 495 of Sastry Award clearly states that in all other cases, except in the case of those whose work is found to be unsatisfactory, probationers after the expiry of the period of six months should be deemed to be confirmed in services.

The petitioner states that her services were terminated without giving her proper opportunity to establish that she was perfectly fit for service in spite of her said defective vision, if any. It is further stated that the termination of her services are contrary to the stipulation laid down as regards notices in para 521(1) of Sastry Award or the procedure for termination prescribed in Cl. 19.12 of the Bipartite settlement. The Respondent Bank relied upon some guidelines regarding medical standards to be applied in the case of new recruits. Her termination is illegal as sufficient opportunity was not given to her on the basic principles of natural justice, equity and good conscience. The Chief Manager, Hyderabad branch himself gave a certificate that she was a trust-worthy and hard-working assistant and a recognised professor of Ophthalmology and Civil Surgeon of Sarojini Devi Eye Hospital, Hyderabad certified that she is fit to carry out normal duties as a Clerk. Therefore she may be reinstated.

3. The respondent filed the Counter and the brief contents of the Counter are as follows :

Para 1 of the petition being reference needs no reply. It is true that the petitioner qualified and selected through the test and interview conducted by the Banking Service Recruitment Board in the year 1984 and she was given posting order as Clerk-cum-Typist. The said appointment Order contains certain terms and conditions of appointment and also for the period of Probation. The period of probation is 6 months and it can be extended not exceeding 3 months. One among the conditions of appointment Order is that the employee should submit Medical Certificate with regard to his or her physical fitness. The contention of the petitioner that she is working to the satisfaction of her superiors is not correct. Most of the material facts of the claim statement are in correct. On 15-9-1985 the Bank requested the Superintendent, Sarojini Devi Eye Hospital, Hyderabad to examine the petitioner and the Superintendent by his letter dated 9-12-86 made the following observation :

"I. VISION :

Better eye 6/6 with or without glasses. Worst Eye : 6/9 with glasses or without glasses permissible diaptic power of the eye : + or -6

According to the standard of the medical fitness she is not entitled for appointment. Therefore, her services were terminated. The contention of the petition that she was not given fullest opportunity is not correct. The guidelines adopted by the management (Respondent Bank) are correct. The Respondent-Management did not rely upon the certificate issued by Sri Dr. P. Madhusudhana Swamy, Gandhi Hospital and Civil Surgeon, Sarojini Devi Eye Hospital.

With regard to Para 9 it is submitted that the petitioner worked with a condition of medical certificate as such though she worked continuously without break for 270 days she is not entitled to claim as a matter of right for permanent post and it is well settled law that the workman worked for 240 days continuously as a matter of right they cannot claim permanent post. Therefore, the workman-petitioner is not entitled to get any relief and the award may be passed against her.

4. On behalf of the petitioner WW-1 is examined and on behalf of the Respondent MW-1 is examined. With regard to the documentary evidence on behalf of the workman-petitioner Ex. W-1 to Ex. W-7 are marked and on behalf of the management Respondent Ex. M-1 to Ex. M-7 are marked. With regard to the oral evidence of WW-1 shows all the conditions that are incorporated in her claim statement and there is nothing new in her evidence except marking the said documents on her side through her evidence. On behalf of the Respondent-Management MW-1 is examined and he also spoke the contents of claim statement and marked Ex. M-1 to M-7.

5. The arguments of the both sides are heard. The learned Union leader who appeared in this I. D. on behalf of the workman by name T. Usha Rani filed written arguments and the Advocate for the Respondent argued the matter. The brief contents of the written arguments filed on behalf of the workman are as follows :

It is stated that the term of employment specified in the standing order would prevail over the corresponding terms in the contract of service. The appointment order is Ex. W-1 in clause No. 3 such a right is not given to the management to extend the period of probation without assigning any reason. The extension of probation period of the workman is an extraneous reason. MW-1 in his evidence agreed it is not true to suggest that there is provision in the award and bi-partite settlement for the extension of probation period for the submission of medical fitness certificate. The later part of the Para 495 of Sastry Award states, in all other cases probationers after the expiry of the period of 6 months should be deemed to have been confirmed in service after the expiry of the probation period of six months as her services were not dispensed after expiry of 6 months probation period.

In his written arguments the union leader cited several decisions and rulings of various Courts. In this case it is not question of non-recruitment of an employee into the service but the termination of service of an employee who is already appointed, working satisfactorily for considerable length of time. Under such circumstances what is expected to be established is not defective health but defective workmanship as a result of defective health. Therefore workman requested the court to set aside the termination order served on the workman by name Kum. T. Usha Rani w.e.f. 11-1-80 and she may be reinstated with all back wages.

On the other hand the learned advocate for the Respondent argued that absolutely there is no point in favour of the workman on the following grounds :

The workman was appointed as Clerk-cum-Typist after selected by the Banking Service Recruitment Board that her appointment order continues subject to fulfillment of certain conditions on the part of the workman. The first condition is that she should satisfactorily work with the satisfaction of the Management continuously for a period of 6 months from the date of taking charge, and she has to submit a medical certificate from the competent authority. The Manager referred the workman to the Eye Specialist Dr. P. Madhusudhana Swamy she was examined by Civil Surgeon Ophthalmologist in Sarojini Devi Hospital and gave an opinion that : I. VISION : Better eye : 6/6 with or without glasses Worst Eye : 6/9 with or without glasses, Permissible diaptic power of the eye : + or -6. The said superintendent

dent who is an expert in Ophthalmology have informed that as per the standard of the Medical fitness the workman Kum. T. Usha Rani is not entitled for appointment. The workman on the other hand submitted a Physical fitness certificate about her vision from a doctor who is not an expert in Ophthalmology. Moreover her services are not satisfactory at request of the management her services were extended by another 3 months. It is further argued that the respondent-management taken action according to the service conditions only. The workman mis-constructed the provision of para 495 of Sastry Award and para 21.17 of Desai Award. Her probation was not extended because of unsatisfactory work not above provisions settle to her case.

The candidate will be compelled her post only after producing satisfactory medical certificate. If there is any defect in her health or defect in her eye sight or any other defects which are certified by the medical officer which shows that she is not fit for duty. In such case, the workman is not entitled to continue in service. She was allowed to continue in service subject to the production of the medical certificate. Simply because her probation was extended by 3 months no right vested on her to claim permanent employment. Hence she was referred to the Sarojini Devi Eye Hospital. She voluntarily attended and got himself tested her eyes by the competent doctor and that doctor forwarded the certificate unless the workman is physical fit and complies all the conditions that are laid down in her appointment order he or she can not continue in service and the provisions of Sastry Award are not attracted in her case. Therefore the workman is not entitled for reinstatement or any other benefits and as such the award may be passed accordingly against the workman.

6. The point for consideration is whether there are any valid grounds to accept the termination order passed by the management on the workman or not? or as to whether the workman is entitled for any other relief?

7. At the very outset I would like to mention that the simple point for adjudication is that as to whether the action taken on the part of the management of Andhra Bank in terminating services of Kum. T. Usha Rani, Clerk-cum-Typist w.e.f. 11-1-1986 is justified or not. If not, as to whether the workman is entitled to get any other relief. I would like to mention that there is only one workman in this case. With regard to her social status prior to her retrenchment she worked as Clerk-cum-Typist on the basis of the posting orders issued by the respondent-management. It is an admitted fact that the workman appeared for the competitive examination conducted by the Banking Service Recruitment Board and got her successful in the test and she was given an appointment order for the post of Clerk-cum-Typist.

It is very much significant to note that the very appointment order given to her posting as Clerk-cum-Typist is not a permanent assignment by itself in the initial stage. As per the guidelines issued by the Respondent-management any person who is selected by the Respondent-Management who is appointed in a particular cadre should be continued in service subject to the fulfilment of certain conditions. The top most conditions on the workman that he or she should qualify during the initial stages his or her services which the workman should work continuously for a period of 6 months on probation which can be extended by another 3 months and that period should be to the satisfaction of the Respondent-Management. And the second condition is that the workman should submit a Physical fitness certificate from the competent authority.

I would like to mention that as per Ex. M-13 which is marked through MW-1 is a certificate issued by the Sarojini Devi Eye Hospital which is run by Government of Andhra Pradesh and the Superintendent of said hospital issued the certificate and there is another certificate issued by some other doctor of the same hospital which is marked as Ex. W-3 on behalf of the workman from the same Sarojini Devi Hospital. As per Ex. M-11 which was marked through MW-1 petitioner

wherein it was laid down that the procedure for new recruitments with regard to the medical examination.

At the end I would like to mention that it is an admitted fact that the workman has gone through the competitive examination and she was given temporary appointment and her probation was decided from 6 months to 9 months. There is no record to show that she is not fit for duty on medical grounds and her probation period is not satisfactory to her superiors. I would like to further mention that the individual who is above 30 years of age her appointment and her services were terminated about 5 years ago and there is likelihood of change of her health condition with regard to vision also. It is another significant aspect to note that as per the medical certificate issued by Sarojini Devi Eye Hospital doctor no where it is mentioned that she is not fit for duty either on account of her physical inability or on account of her defective vision. But the management discharged her services as according to their guidelines she was not fit for duty. Therefore having considered the entire material available on record I am of the clear opinion that the ends of the justice will be met if the workman is referred to the Medical Board at Hyderabad so that she can be examined by the Medical Board at Hyderabad and the Medical Board is to issue a certificate as to whether she is physically and mentally fit for discharging her duties as Clerk-cum-Typist or not. In case if the Medical Board issued a certificate to the effect that the workman by name Kum. T. Usha Rani is physically fit to discharge her functions as public servant in her capacity as Clerk-cum-Typist the management is hereby directed to reinstate her but at the same time the workman is not entitled to get any back wages or any other financial benefits and she is entitled only for continuity of service only without any back wages.

In the result an Award is passed directing the workman Kum. T. Usha Rani, to appear before the Medical Board at Hyderabad and to get himself examined before the Medical Board. The Medical Board has to examine the workman by name Kum. T. Usha Rani and to give a certificate as to whether physically and mentally she is fit for discharging her duties as Clerk-cum-Typist. If the Medical Board issues a certificate to the effect that she is not fit for discharging duties physically and mentally then ends the matter.

On the other hand if the Medical Board issues a certificate to the effect that she is fit for discharging her duties as Clerk-cum-Typist the Respondent-Management is directed to reinstate the workman Kum. T. Usha Rani as Clerk-cum-Typist. But the workman is not entitled to get any kind of back wages or any monetary relief. She will get her salary only from the date of herself taking charge. The Award is passed accordingly.

Dictated to the Stenographer and transcribed by him and corrected by me and given under my hand and seal of this Tribunal on this 5th day of December, 1992.

Y. VENKATACHALAM, Chairman
Industrial Tribunal, Hyderabad-I

Appendix or Evidence

Witnesses examined for the

Petitioner-Workman :

1. WW-1—Miss. T. Usha Rani.

Witnesses examined for the

Respondent-Management :

1. MW-1—A. Janardhana Reddy

2. MW-2—R. Sethuraman

3. MW-3—Dr. R. Balasubrahmanyam

Documents marked for the petitioner-workman

1. Ex. W-1—Photostat copy of the appointment order
Lr. No. 666/Stt/3/A/2/1522 dated 1-4-86 issued to
T. Usha Rani by the Staff Manager, Andhra Bank,
Central Office, Sultan Bazar, Hyderabad.

2. Ex. W-2—Photostat copy of the certificate dated 18-2-86 issued to Miss T. Usha Rani by the Chief Manager, Andhra Bank, Sultan Bazar, Hyderabad.
3. Ex. W-3—Photostat copy of the Order dated 11-10-85 given by Chief Manager, Andhra Bank, Sultan Bazar, Hyderabad to Miss T. Usha Rani, with regard to extension of her probation period.
4. Ex. W-4—Photostat copy of the Termination order dated 10-1-86 issued to Miss T. Usha Rani by the Chief Manager Andhra Bank, Sultan Bazar, Hyderabad Main Bazar.
5. Ex. W-5—Photostat copy of the Medical certificate dated 2-1-86 issued to Miss T. Usha Rani, by Dr. P. Madhusudhana Swamy M.B.M.S.D.O. Professor of Ophthalmology Osmania Medical College and Civil Surgeon, Sarojini Devi Eye Hospital, Hyderabad.
6. Ex. W-6—Photostat copy of the Minutes of the I. R. meeting held at Bombay on 6th and 7th October, 1986, between the management of Andhra Bank and the Union.
7. Ex. W-7—Photostat copy of the written statement filed by the Union before the Asstt. Labour Commissioner (C), Hyderabad dated 18-8-86.

Documents marked for the Respondent-Management

1. Ex. M-1—Application of T. Usha Rani for Clerical Cadre Post.
2. Ex. M-2—Mail Ticket of T. Usha Rani issued by Banking Service Recruitment Board for Clerical Cadre Recruitment, 1984.
3. Ex. M-3—Letter dated 27-2-1985 addressed to T. Usha Rani by the Secretary, Banking Service Recruitment Board with regard to recruitment of clerical personnel 1984 allotments.
4. Ex. M-4—Photostat copy of the appointment order dated 1-4-85 issued to T. Usha Rani by the Staff Manager, Andhra Bank, Central Office, Sultan Bazar.
5. Ex. M-5—Application for position.
6. Ex. M-6—Medical Examination. Part I—candidates statement and Physical examination report Part II—along with Dr. Balasubramanyam's remarks and Medical certificate with regard to T. Usha Rani.
7. Ex. M-7—Letter dated 10-9-1985 addressed by Asst. General Manager, Staff Department, Central Office to the Superintendent, Sarojini Devi Eye Hospital, Humayun Nagar, Hyderabad with regard to opinion on Medical fitness of Miss T. Usha Rani.
8. Ex. M-8—True copy of the letter dated 11-10-85 addressed by Chief Manager, Hyderabad Branch, Sultan Bazar, Hyderabad to the Manager, Andhra Bank, Sultan Bazar, Hyderabad with regard to extension probation period of T. Usha Rani.
9. Ex. M-9—Medical Certificate issued to T. Usha Rani by the Superintendent, Sarojini Devi Eye Hospital.
10. Ex. M-10—Letter dated 20/24-9-1985 addressed by Superintendent Sarojini Devi Eye Hospital, Hyderabad to the Assistant General Manager, Staff Department, Central Office, Andhra Bank Hyderabad, Sultan Bazar with regard to Medical Examination in respect of Miss. T. Usha Rani.
11. Ex. M-11—Photostat copy of the Letter dated 6-8-1985 of the Assistant General Manager, Andhra Bank, Central Office, Hyderabad with regard to Staff—new recruits—procedure and Medical examination.
12. Ex. M-12—Representation dated 2-9-85 made by T. Usha Rani to the General Manager, Andhra Bank, Central Office, Hyderabad with regard to her appointment in service of the Bank Medical examination.
13. Ex. M-13—Photostat copy of the Medical observation dated 9-12-1985 given by P. Ranga Reddy, Superintendent Sarojini Devi Eye Hospital to the Deputy General Manager, Andhra Bank, Sultan Bazar, Hyderabad with regard to rules and regulations of Selecting of the candidates.
14. Ex. M-14—Medical Certificate dated 8-8-85 issued to Miss T. Usha Rani by Dr. M.S. Raju of Satya Eye Clinic, Barkatpura.
15. Ex. M-15—Letter dated 1-4-85 of the Staff Manager, Andhra Bank, Central Office, Hyderabad to T. Usha Rani advised her to present before Bank's approved Doctor for Medical Check up.
16. Ex. M-16—Letter of the Staff Manager dated 8-1-86 addressed to Chief Manager with regard to T. Usha Rani clerk on probation and Termination of her service.
17. Ex. M-17—Termination order dated 10-1-86 issued to T. Usha Rani by the Chief Manager, Andhra Bank, Sultan Bazar, Hyderabad.

नई दिल्ली, 30 दिसम्बर, 1992

का. मा. 103—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, यूनिन बैंक ऑफ इण्डिया के प्रबंधन के संबंध निवोधकों और उनके कर्मचारों के बीच अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचपद को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-12-92 को प्राप्त हुआ था।

[संख्या एन 12012/391/89 की -2 (ए)]

वी. के. वेणुगोपालन, डेस्क अधिकारी

New Delhi, the 30th December, 1992

S.O. 103.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Union Bank of India and their workmen, which was received by the Central Government on 24-12-92.

[No. L-12012/391/89-D.II(A)]

V. K. VENUGOPALAN, Desk Officer

ANNEXURE

BEFORE SRI ARIAN DEV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT PANDU NAGAR, KANPUR

Industrial Dispute No. 82 of 1990

In the matter of dispute between :

Sri Anup Kumar Agrawal,
C/o Sri A. K. Kulshreshtha,
6 P. T. Colony,
Agra.

AND

Dy. General Manager,
Union Bank of India,
Hotel Clarks Awadh,
8 M. G. Marz Lucknow.

AWARD

1. The Central Government, Ministry of Labour, vide its notification no. L-12012/391/89-D-11(A) dt. 19-3-1990, has referred the following dispute for adjudication to this Tribunal :—

Whether the action of the management of Union Bank of India was justified in retiring the workman Sri Anup Kumar Agrawal voluntarily from the services of the Bank? If not, to what relief is the workman entitled?

2. On 28-9-92, the case was fixed for the cross-examination of the workman, but none appeared from the side of the workman. The case was ordered to come up for cross-examination of the workman on 9-10-92, but again on 9-10-92, the workman failed to attend the proceedings of the case. It, therefore, appears that the workman is not interested in prosecuting the case.

3. Therefore in the above circumstances a no claim award is given against the workman.

4. Reference is answered accordingly.

Sd/- 12-11-92

ARJAN DEV, Presiding Officer

नई दिल्ली, 30 दिसम्बर, 1992

का. भा. 104.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के प्रसूचन में, केन्द्रीय सरकार, भारतोन जीवन बीमा निगम के प्रबंधन के संबंध में निहित अधिकारों और उनके कर्म-कारों के बीच प्रमुख में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चण्डीगढ़ के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-12-92 को प्राप्त हुआ था।

[संख्या एल 17012/10/88-बी-4(ए)]

बी. के. वेणुगोपालन, डेस्क अधिकारी

New Delhi, the 30th December, 1992

S.O. 104.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Life Insurance Corporation of India and their workmen, which was received by the Central Government on 21-12-92.

[No. L-17012/10/88-D.IV(A)]

V. K. VENUGOPALAN, Desk Officer

ANNEXURE

BEFORE SHRI ARVIND KUMAR, PRESIDING OFFICER,
CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, CHANDIGARH

Case No. I.D. 74/88

Dinesh Kumar Goyal Vs. L.I.C.,

For the workman.—Shri

For the management.—Shri J. P. S. Sandhu.

AWARD

Central Govt. vide gazette notification No. L-17012(10)/88-D.IV(A) dated 10th of October 1988 issued U/S 10(1)(d) of the I.D. Act 1947 referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of the Life Insurance Corporation of India in giving preference

to Shri Resham Singh over Shri Dinesh Kumar in making temporary appointment between 25-11-1986 to 17-2-1987 is justified? If not, to what relief the workman is entitled?"

2. In the claim statement it has been alleged that he worked as Asst. Typist with the respdt. from 3-3-1986 and his services were terminated on 31-3-1986. It has been alleged that the said termination is illegal and arbitrary. It is further alleged that several juniors have been retained. It was further alleged that Resham Singh was appointed and he worked from 25-11-86 to 17-2-1987 and One Suvita Rani was appointed in his place and after his termination. Thus the management has violated the provisions of Section 25-G and H of the I.D. Act. It was further alleged that there was no complaint against him and was not given any show cause notice or charge sheet before the termination.

3. The respdt. management contested the claim and the plea was taken that the petitioner was appointed on purely temporary basis and was appointed for 84 days from 3-3-1986 to 13-4-1986 and from 21-4-1986 to 30-5-1986. Other allegations were denied. It was pleaded that the termination of the petitioner on 30-5-1986 was strictly in accordance with the terms and conditions of the appointment letters. It is further pleaded that Resham Singh was appointed on temporary basis from 25-11-1986 to 3-1-1987 and then from 9-1-1987 to 17-2-1987. It is further pleaded that the appointment of said Resham Singh was not in continuous of termination of service of the petitioner Dinesh Kumar Goel and hence there is no violation of Section 25-G & H of the I.D. Act 1947.

4. Replication was also filed reasserting the claim made in the claim petition.

5. Petitioner in support of his case examined himself as W1 and tendered his affidavit Ex. W1, in cross-examination he has admitted that neither appointment letter nor termination letter was issued to him. Respdt. management produced Mr. M. S. Mahesh as MW1 who tendered his affidavit Ex. M1 in evidence and relied on documents Ex. M2 application of the petitioner, Ex. M3 instructions issued by the Senior Divisional Manager to officers incharge L.I.C. Ex. M4 the certificate of employment exchange, Ex. M5 recommendation of the appointment of Resham Singh, Ex. M6 and M7 appointment letters of Resham Singh and also relied on Mark 'X'.

6. I have heard both the parties and gone through the evidence and record.

7. Main stress of the counsel of the petitioner is that respdt. management has violated the provisions of Section 25-H of the I.D. Act as no offer of appointment was given to the petitioner in preference to Resham Singh. I however do not accept the contention of the learned counsel for two reasons. Firstly the petitioner was removed from service w.e.f. 30-5-1986 and there is no evidence that after the removal of the petitioner from service, the work had still continued with the respdt. management, because the respdt. management thereafter appointed Resham Singh w.e.f. 25-11-1986 after a gap of six months from the removal of the petitioner from service. In these circumstances it can not be said that the post against which the petitioner was worked continued even after the termination of his services. Not only this as apparent from Ex. M3 the respdt. management had changed their policy with regard to their recruitment. In the said document the senior divisional manager has directed to the officer incharge to appoint temporary assistant for small spell and candidate should be registered with local employment exchange. Ex. M4 is the document showing that the name of the said Resham Singh was duly registered with the local employment exchange and Ex. M5 is the recommendation of the officer incharge addressed to senior divisional manager considering the name of Resham Singh eligible for the post. There is no evidence that the name of the petitioner was also registered with the employment exchange. Nor the petitioner has claimed as such. In view of this as discussed above

since the resp't. management has changed their policy procedure of recruitment, the petitioner is certainly no preference over Resham Singh.

In view of the discussion made in the earlier paras the resp't. management has not violated the provisions of Section 25 G & H of the I.D. Act 1947. The petitioner is not entitled to any claim what-so-ever. The reference is returned accordingly.
Chandigarh.

17-11-1992.

ARVIND KUMAR, Presiding Officer

नई दिल्ली, 17, दिसम्बर, 1992

का. मा. 105 औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के प्रवर्णन में, केन्द्रीय सरकार द्वारा कोलबेरा कोयलेरी आफ साउथ ई सी लि. के प्रबन्धन के संबंध नियोजकों और इन कर्मचारों के बीच, प्रवर्णन में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक प्रतिक्रिया भुवनेश्वर के संबन्ध को प्रकाशित करती है जो केन्द्रीय सरकार का 12-2-92 को प्रस्ताव हुआ था।

[नम्बर एल 22012/107/90-आईआर (का 11)]

राजा लाल, डेस्क अधिकारी

New Delhi, the 17th December, 1992

S.O. 105.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bhubaneswar as shown in the Annexure in the industrial dispute between the employers in relation to the management of Deulbera Colliery of South E.C. Ltd. and their workmen, which was received by the Central Government on 17-12-1992.

[No. I-22012/107/90-IRC-II]

RAJA LAL, Desk Officer

ANNEXURE

INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESWAR

Present :

Sri R. K. Dash, LL.B.,

Presiding Officer,

Industrial Tribunal,

Orissa, Bhubaneswar.

Industrial Dispute case No. 29 of 1991 (Central)
Dated, Bhubaneswar, the 30th November, 1992

BETWEEN

The management of Deulbera Colliery of South Eastern Coalfields Ltd., At/P.O. Talcher, Dist : Dhenkanal.
... First party-management.

AND

Their workman Sri Muchia Pradhan, represented through Orissa Coalfields Labour Union, A/P.O. Deulbera, Dist : Dhenkanal. ... Second Party-workman.

APPEARANCES :

Sri A. K. Patra, Personnel Officer.—For the first party-management.

Sri P. C. Sahoo, President of the Union.—For the second party-workman.

AWARD

The Government of India in the Ministry of Labour, in exercise of its power conferred upon it by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute for adjudication by this Tribunal vide order No. L-22012(107)/90-IRC(II) dated 20-8-91 :—

“Whether the action of the management of Deulbera Colliery of SECL, At/P.O. Deulbera, Dist : Dhenkanal in retiring Shri Muchia Pradhan, Conveyor Khalasi with effect from 16-7-89 is justified? If not, to what relief is the workman entitled?”

2. The case of the workman in brief is that he joined service on 12-6-1955 in the Sand Gaining Plant of the National Coal Development Corporation. During course of his employment he was issued with an identity card wherein his date of birth had been mentioned as 16-7-1935. About 32 years thereafter the Management again issued him another identity card incorporating his date of birth as 16-7-1929 thereby raising his age by six years. He complained against such entry and prayed for correction but it was not heeded to. Relying on this wrong entry of his date of birth, the management whimsically retired him from service with effect from 16-7-1989 though he had six years more to serve.

3. The management on the other hand refusing the case of the workman has pleaded inter-alia that in all the relevant records of the management including that of the identity card issued to the workman his date of birth has been noted as 16-7-1935. Acknowledging the aforesaid date of birth to be true and correct, the workman put his thumb impression in the service sheet/register which has been maintained by the management in due course of official transaction. Further, the workman has been medically examined in Deulbera Colliery hospital on 27-4-1967 where the Physician after examining him assessed his age to be 38 years which confirms to the entry made in the service sheet/register. The workman was supplied with the copy of his service excerpts on 7-9-87 and was asked to file objection, if any, within 14 days and accordingly he submitted a petition on 15-9-87 for correction of his date of birth from 16-7-1929 to 16-7-1935. On receipt of his representation he was referred to the Age Determination Committee/Task Force Committee which met on 28-5-88 and there it was decided that his date of birth as mentioned in the service record i.e. 16-7-1929 is correct. In sum and substance, the case of the management is that the date of birth of the workman has been rightly mentioned in his service register as 16-7-1929 and accordingly he has been retired from service on attaining the age of superannuation on 16-7-1989.

4. In view of the pleadings of the parties, the only question to be determined in this case is whether the workman was born on 16-7-1929 as alleged by the management or on 16-7-1935 as pleaded by the workman.

5. The management to prove its case has examined three witnesses and brought some documents in evidence. On the other hand, the workman has proved his identity card only.

6. It is a peculiar case of its own nature where the workman, it is alleged, being desirous of getting a job for his son under his employer lost his own job by being superannuated before attaining the age of retirement. From the evidence of M.W.1 it appears that he filled-up two forms, Exts. 1 and 2 for the workman to be submitted to the management for considering the prayer for giving employment to the dependent of the workman. The date of birth of the workman has been mentioned in Exts. 1 and 2 as 16-7-1929 on which the management strongly relies upon as an admission. The workman does not appear to be educated. Sometimes he affixes his thumb impression and sometimes his signature. Exts. 1 and 2 which bear his signatures clearly indicate that with much difficulty he is able to sign his name. It is not borne out from the evidence of M.W.1 as to who supplied the date of birth of the workman to be

mentioned in Exts. 1 and 2. Ext. 3 relates to the service particulars of the workman where it is mentioned that the workman was born on 16-7-1929. According to M.W.3 the aforesaid date of birth could be mentioned on verification of the service register. He, however, does not say as to who verified the service register and filled-up Ext. 3. The other important document on which the management relies upon is Ext. 4 which, according to it, was maintained in regular course of official business by Deulbera Colliery. M.W.3 while being examined in the Court though referred to the original of the aforesaid document but the management instead of proving the same in the Court only filed the xerox copy thereof and brought the same in evidence. However, during cross-examination M.W.3 by referring the original of Ext. 4, has admitted that Column No. 2 of the said document relating to date of birth of the workman has been filled-up in different ink and pen. Neither any evidence has been led to prove as to who filled-up Ext. 4 nor any explanation has been offered as to why a different pen and ink was used to fill-up the important column relating to date of birth of the workman. The most suspicious circumstance to doubt the genuineness of the aforesaid document is that the Manager while putting his signature has not given the date. In this view of the matter, it is difficult to believe that Ext. 4 had come into existence prior to the dispute. In the circumstance, the same is excluded from consideration for deciding the question of date of birth of the workman.

7. As it appears from the record, the workman was medically examined on 27-4-67 and on examination the doctor determined his age to be 38 years. To rely upon the said document as a piece of evidence the management ought to have examined the doctor. That having not been done and there having no evidence as to the mode and nature of examination conducted by the doctor, Ext. 5 can not be accepted on its face value to ascertain the age or date of birth of the workman.

8. The workman on the other hand, to prove his case relies upon the identity card Ext. A issued by the Deulbera Colliery where his date of birth has been mentioned as 16-7-1935. The authenticity of the said identity card has not been challenged by the management. On the other hand, it is admitted by M.W.1 that all the workmen had been issued identity cards by the National Coal Development Corporation and Ext. 1 is one of such cards that had been issued to the workman. The said identity card having been issued to the workman at the earliest point of time when he entered into service its genuineness can not be doubted, particularly when there is no challenge by the management.

9. In view of my discussions made above, I gather an impression that the management having given a false promise to the workman to give employment to his son filled-up Exts. 1 and 2 through its employees by mentioning wrong date of birth with a view to using the same as an admission against the workman and superannuated him though he had some more years to serve. From the oral and documentary evidence it is proved beyond doubt that the date of birth of the workman being 16-7-1935 he would have continued in service till July, 1995. Having held thus, I am of the opinion that the action of the management in retiring the workman from service with effect from 16-7-1989 is illegal and unjustified. He be reinstated in service with full back wages. All the back wages be paid within three months from the date of publication of this Award.

10. The reference is answered accordingly.

Dictated & corrected by me.

R. K. DASH, Presiding Officer

सं. दिल्ली, 17 दिसम्बर, 1992

का. प्र. 106 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुवर्ण में, केन्द्रीय सरकार सेट्रल कोलफील्ड्स लि. के प्रभुत्व के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुवर्ण में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण, घटना के संबंध में प्रस्तुत करता है, जो केन्द्रीय सरकार का 17 दिसम्बर 1992 को प्रतिष्ठित हुआ था।

[संख्या एन-24012/165/86-डी-IV (बी)]

राजा लाल, डेस्क ऑफिसर

New Delhi, the 17th December, 1992

S.O. 106.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Dhanbad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Central Coalfields Ltd. and their workmen, which was received by the Central Government on 17-12-1992.

[No. I-24012/165/86-D.IV(B)]

RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT :

Shri B. Ram, Presiding Officer.

In the matter of an industrial dispute under Section 10(1) d) of the I.D. Act, 1947

Reference No. 145 of 1987

PARTIES :

Employers in relation to the management of Regional Repair Shop (KTA-B&K-Dhori) Jarangdih of Central Coalfields Limited and their workmen.

APPEARANCES :

On behalf of the workmen : Md. Zubair, Vice President, RCMS R. R. Shop Branch, JRD.

On behalf of the employers : Sri S. S. Mahaprashasta authorised representative.

STATE : Bihar.

INDUSTRY : Coal.

Dhanbad, the 27th November, 1992

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-24012 (165)/86-D.IV(B), dated, the 25th May, 1987 :

SCHEDULE

"Whether the action of the Management of Regional Repair Shop (KTA-B&K-Dhori) Jarangdih of CCL, P.O. Jarangdih, Dist. Giridih in stopping one increment of Sri Dhananjay Choudhury, I.D.C. for marking attendance on 13th April, 1985 and for his trade union activities, is legal and justified? If not, to what relief the workman concerned is entitled?"

2. This reference is pending for filling W.S. by the parties. Uptil now no W.S. has been filed either of the party and in the meantime on 1-6-92 Shri Md. Zubair Vice-President, RCMS R.R. Shop Branch, JRD requesting to withdraw the case under reference from the Hon'ble Court. In the application nothing has been shown as what happened with the concerned workman. As per reference one increment of Sri Dhananjay Choudhury, I.D.C. was stopped for marking attendance on 13-4-85 and also for his trade union activities.

3. Since the case has already been withdrawn by the union I find no reason as to what necessary permission should not be granted and order be not passed. This withdrawn means the concerned workman is not interested in pursuing the matter. On the petition so filed there is an endorsement as no objection from the side of the management. In the circumstances of the case a 'No dispute' Award is passed.

B. RAM, Presiding Officer

नई दिल्ली, 17 दिसम्बर, 1992

का. अ. 107 .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार फूड कारपोरेशन ऑफ इंडिया के प्रबन्धन के संबंध निरीक्षकों और उनके कर्मचारियों के बीच, अनुबन्ध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, मद्रास के पंचसद की प्रकाशित करती है, जो केन्द्रीय सरकार की 17 दिसम्बर, 1992 की आज्ञा हुआ था।

[संख्या एन-42012/8/84 डी-5)]

राजालाल, डेस्क अधिकारी

New Delhi, the 17th December, 1992

S.O. 107.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Madras as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Food Corporation of India and their workmen, which was received by the Central Government on 17-12-1992.

[No. L-42012/8/84-D.V]

RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMILNADU MADRAS

Tuesday, the 29th day of September, 1992

PRESENT:

Thiru M. Gopalaswamy, B.Sc., B.L., Industrial Tribunal.

Industrial Dispute No. 9 of 1985

(In the matter of the dispute for adjudication under section 10(1)(d) of the Industrial Disputes Act, 1947, between the workman and the Management of Food Corporation of India, Madras-6).

Between

Thiru S. Kannan,
No. 6, Ambethkar Street, Sastrinagar,
Pattabiram, Madras-72.

And

The Senior Regional Manager,
Food Corporation of India,
5/54, Greames Road, Madras-600006.

REFERENCE:

Order No. L.42012(8)/84-DV, Ministry of Labour & Rehabilitation, Department of Labour, dated 22-1-85, Government of India, New Delhi.

This dispute coming on for final hearing on Tuesday, the 1st day of September, 1992, upon perusing the reference,

claim and counter statements and all other material papers on record and upon hearing the arguments of Thiru S. Vajayanathan for Thiruvalargal Row and Reddy, Advocates appearing for the workmen and of Thiru N. V. Balasubramaniam, Advocate appearing for the Management and this dispute having stood over till this day for consideration, this Tribunal made the following award.

AWARD

This dispute between the workman and the management of Food Corporation of India, Madras-6 arises out of reference under section 10(1)(d) of the Industrial Disputes Act, 1947 by the Government of India in its order No. I-42012(8)/84-D.V., dated 22-1-1985 of the Ministry of Labour & Rehabilitation, for adjudication of the following issue:

Whether the action of the management of Food Corporation of India, Madras is not giving opportunity to the retrenched NMR workman Shri S. Kannan to offer himself for re-employment in their establishment is justified? If not, to what relief the workman concerned entitled?

(2) The Petitioner states as follows : He joined the service of the Respondent in the Engineering Section in the job of Electrician on NMR basis on 4-5-77. He has completed 240 days of service in the twelve months preceding his retrenchment on 31-12-77 A.N. He was disengaged without assigning any reason. The petitioner wrote several letters to the Regional Manager of the Respondent requesting re-employment. But he received no response or reply. Other NMR workers who were juniors to the Petitioner are still employed under the Respondent and their services have also been regularised. When the Petitioner personally approached, the authorities of the Respondent the Petitioner was told that a favourable decision would be taken regarding his re-employment. But nothing came out. Finally in 1983, he sent a letter to the Regional Labour Commissioner requesting conciliation. But conciliation proceedings ended in a failure report. The action of the Respondent in not giving re-employment to the Petitioner is unjust and illegal and it amounts to violation of Section 25-B of the Industrial Disputes Act. Even assuming that the Petitioner has not completed 240 days of service he cannot be retrenched in view of Section 25-B of the Industrial Disputes Act. The retrenchment is also illegal on the ground that the Petitioner's juniors have been retained in service by violating section 25-G. The Respondent has also failed to offer re-employment to the Petitioner when several other retrenched NMR employed have been re-employed in the light of Section 25-H. Therefore, an award may be passed directing the Respondent to re-employ the Petitioner with effect from 1-1-1978 and give him back wages with all other attendant benefits.

(3) The Respondent in his counter states as follows : The Petitioner was given work on daily rate basis. He was not given employment through the Employment Exchange. In accordance with the FCI Staff Regulations and Employment Exchange Act, the Petitioner could not be employed without coming through the Employment Exchange. The Respondent has not received any of the letters allegedly written by the Petitioner. He could not be retained in service continuously without complying with the FCI Staff Regulations and hence he was retrenched. It is not true that juniors to the Petitioner were retained by the Respondent and their services regularised. There is no question of calculating any seniority in service of persons working temporarily on NMR basis.

(4) The Petitioner has not put in 240 days of work. He had worked only on a day today basis and on days when work was available. The Petitioner is not to strict proof of his having worked for 240 days. As the Petitioner's name was not sponsored by the Employment Exchange, as required by the Regulations, the Respondent did not consider the Petitioner for re-employment. The Petitioner cannot invoke Section 25-B of the Industrial Disputes Act. The Respondent

has not violated any other provision of the I.D. Act. The Respondent is not legally liable to provide employment to the Petitioner after he was retrenched. Hence the claim is liable to be dismissed.

(5) The points for determination are as follows :

- (1) Whether the retrenchment of the Petitioner with effect from 1-1-1978 is illegal
- (2) Whether the Respondent's failure or refusal to offer re-employment to the Petitioner is just and lawful?
- (3) To what relief?

(6) The Petitioner Thiru J. Kannan has examined himself as W.W. 1. The Respondent examined Thiru Pakkirisamy, Assistant Manager (Civil Engineering) who was subsequently promoted as Deputy Manager as M.W. 1. Exs. W. 1 to W. 12 and M. 1 to M. 7 have been marked. W.W. 1. Thiru Kannan was appointed as Kalasi and then disengaged without any written orders on NMR basis in the status of a casual worker. He has worked on the said job from 4-2-77 to 31-12-77 afternoon. He was not given any work by the Respondent from 1-1-78. It was Respondent's case even before the Conciliation Officer as disclosed by Ex. W. 9, the Conciliation Failure Report, that the total number of working days on which he worked was only 172 days and it was far less than 240 days within a period of preceding twelve months. Ex. W. 8 which is copy of a letter addressed by the Deputy Manager of the Respondent to the Assistant Labour Commissioner contains an averment that the Petitioner has not worked for 240 days. In the conciliation failure report, the Respondent has not admitted the Petitioner's claim of having worked for 240 days and more. M.W. 1, the Deputy Manager in his evidence stated that the Petitioner has worked only for 228 days upto 31-12-77 including leave days. Ex. M. 4 circular issued by the Madras Zonal office of the Respondent declares that any employee of the Respondent who was engaged before 25-1-76 can be considered for being regularly appointed only if the employee gets sponsored by the Employment Exchange and that without such sponsoring the employee cannot be considered for regular employment. In order to succeed, the Petitioner has to prove that he has worked for 240 days as required by Section 25-F of the I.D. Act and show that retrenchment is illegal. I believe the evidence of M.W. 1 as true and hold that the Petitioner has not worked for as many as 240 days to make his case fall under sections 25-B and 25-F. I therefore hold that the Petitioner has failed to prove that the retrenchment is not lawful under Section 25-F of the I.D. Act. We understand that the Petitioner has secured employment in a private Sector Company as disclosed by Ex. M. 7. The Respondent has taken a policy decision for giving employment on a regular basis only to those persons who are sponsored by the Employment Exchange in the light of amended regulation 9(a) of F.C.I. Staff Regulations. Hence I find that there is no illegality in the acts of the Respondent in retrenching the Petitioner without following the provisions of Section 25-F and not offering him to consider the Petitioner for re-employment except through Employment Exchange and in the light of the FCI Staff Regulations. Hence all the points are answered against the Petitioner.

(7) In the result, an award is passed dismissing the claim of the Petitioner-workman. No costs.

Dated, this 29th day of September, 1992.

THIRU M. GOPALASWAMY, Industrial Tribunal
WUINFSS EXAMINED

For Workman

W.W. 1. Thiru S. Kannan.

For Management

M.W. 1—Thiru S. Pakkiriswamy,
2/G1/93-4

DOCUMENTS MARKED

For Workman

- Ex. M-1/14-11-77—Service Certificate issued to Thiru S. Kannan by the Junior Engineer of the Management (copy).
- Ex. W.2/10-3-78—Letter from Thiru S. Kannan to the Management asking for reinstatement (copy).
- Ex. W.2(a)/5-8-78—do
- Ex. W.3/2-2-79—Letter from S. Kannan to the Management asking for reinstatement (copy)
- Ex. W3(a)/10-8-79 do-
- Ex. W./5-6-80—do-
- Ex. W.4.a./10-12-80—do-
- Ex. W.5/3-1-81—Letter from Thiru S. Kannan to the Management asking for reinstatement (copy).
- Ex. W-6/3-1-81—Letter from Thiru S. Kannan to the Asst. Labour Commissioner (C), Madras for reinstatement.
- Ex. W.7/20-2-84—Letter from Thiru S. Kannan to the Asst. Labour Commissioner (C) II, Madras 6 about justifying his action to raise an industrial dispute (copy).
- Ex. W.8/1-3-84—Reply by the Management to the Asst. Labour Commissioner (C) II.
- Ex. W.9/13-3-84—Conciliation failure report—copy.
- Ex. WW-10/22-3-79—Office order for appoint of 13 workmen as NMR staff—copy
- Ex. W.11/4-4-79—Office order for appointment of 15 workmen as NMR staff—copy.
- Ex. W.12/15-2-91—Appointment order issued to Thiru K. P. Adaikkalsamy as work assistant (xerox copy).

For Management :

- Ex. M.1/ —Xerox copy of the Muster roll for the month of May, 1977.
- Ex. M.2/ —do- for the month of June, 1977.
- Ex. M.3 —do- for the month of December, 1977.
- Ex. M.4/20-12-77—Circular issued by the Management regarding regularisation of appointments on daily rated and time rated scales of pay—xerox copy.
- Ex. M-5/12-12-77—Appointment order issued to Thiru S. Ramakrishnan and two others as NMR staff—xerox copy.
- Ex. M.6/3-9-87—Confidential letter from the Management to the Personnel Manager, Wilson Co. Ltd., Madras requesting to give service particulars of Thiru S. Kannan in Wilson & Co. Ltd., Madras—xerox copy.
- Ex. M.7/18-12-87—Service certificate issued by Wilson & Co. Ltd., Madras to Thiru S. Kannan.

नई दिल्ली, 31 दिसम्बर 92

का. आ. 108 औद्योगिक विवाद जट्टिमेंट, 1917 (1947 का 14) का धारा 17 के अन्वयेण में केन्द्रिय सरकार से संबंध पण्ड का काई कोविद्यारे आक संशु ई या लि० शास्त्रवत्त के संवत्

नियोजकों और उनके कर्मचारों के बीच झूठसंघ में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, आसंसोल के पंचपट को प्रकाशित करती है, औद्योगिक सरकार को 17-12-92 को प्राप्त हुआ था।

[संख्या 22012/184/88 डी -IV(डी)]

राजा लाल, डेस्क अधिकारी

New Delhi, the 17th December, 1992

S.O. 108.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Asansol as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Nimcha and Kuardj Colliery of M/s. E.C. Ltd. and their workmen, which was received by the Central Government on 17th December, 1992.

[No. L-22012/184/88-D.IV(B)]

RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, ASANSOL.

Reference No. 21/89

PRESENT :

Sri N. K. Saha, Presiding Officer.

PARTIES :

Employers in relation to the Management of Nimcha & Kuardj Collieries of M/s. E.C. Ltd.

AND

Their Workman.

APPEARANCES :

For the Employers—Sri P. K. Das, Advocates.

For the Workman—Sri Bijoy Kumar, Joint Secretary of the Union.

INDUSTRY : Coal. STATE : West Bengal.

Dated, the 30th November, 1992

AWARD

The Government of India in the Ministry of Labour in exercise of the powers conferred on them by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, has referred the following dispute to this Tribunal for adjudication vide Ministry's Order No. L-22012(184)/88-D.IV(B) dated 27th April, 1989.

SCHEDULE

"Whether the action of the Management of Nimcha and Kuardj Collieries of Satgram Area of M/s. Eastern Coalfields Ltd., in not regularising Sri M. D. Chaturvedi as Loading Clerk in Gr. II from 22nd March, 1974 and as Loading Supervisor in Tech. Supervisory Gr. C w.e.f. 1st January, 1977 together with payment of difference of wages of Clerical Gr. III and Gr. II and Clerical Gr. II and Tech. & Supervisory Gr. C from 1977 was justified? If not, to what relief the workman concerned is entitled?"

2. The case of the Union in brief is that the concerned workman Sri M. D. Chaturvedi got initial appointment as a Munchi in Clerical Grade-III in East Nimcha Colliery under M/s. East Lokdih Coal Co. Ltd. on 1st June, 1961. The management in exigency employed him as Loading Clerk in Clerical Grade-II w.e.f. 22nd March, 1974 but did not pay the difference of his wages and also did not regularise him in the job. The workman has been working as Loading Supervisor in Tech. & Supervisory Grade-C w.e.f. 1st January, 1977. But he was neither paid the difference of wages nor he was regularised in the post.

The workman through union made several attempts to settlement the matter. But all efforts ended in failure. Ultimately an industrial dispute was raised by the union but the conciliation failed. The matter was sent to the Ministry of Labour, Government of India. Now the dispute has been sent to this Tribunal for adjudication.

3. The management has filed written objection contending inter-alia that there is no substance in the claim of the workman. The action of the management was justified. The workman is not entitled to get any relief in this Reference. The management has denied all the material averments of the written statement filed by the union.

4. Admittedly Sri M. D. Chaturvedi is a permanent employee of the Eastern Coalfields Ltd. He has filed good number of documents (Exts. W-1 to W-13) which clearly show that he worked as Loading Clerk w.e.f. 22nd March, 1974 and he has been working as Loading Supervisor w.e.f. 1st January, 1977. Admittedly he was not paid the difference of wages and he was not regularised in the post. It is also admitted that still Sri Chaturvedi has been working as Loading Supervisor in Tech. & Supervisory Grade-C. Sri P. K. Das the learned Advocate for the management has urged before me that in a case like the present one the workman is not entitled to get any relief. But he practically could not produce any lot of evidence for raising any presumption in favour of the management ignoring the documents (Exts. W-1 to W-13) filed by the union. So considering all the facts and circumstances of the present case and the documents Exts. W-1 to W-13 filed by the union, I have no hesitation to hold that the action of the management was against equity, natural justice and good conscience.

I find that the workman has been working as Loading Supervisor in Tech. & Supervisory Grade C w.e.f. 1st January, 1977. But still he has not been regularised in the post and he was not paid the difference of wages. Sri Bijoy Kumar the learned Advocate for the union with his usual fairness submits after consulting the concerned workman Sri M. D. Chaturvedi that the workman has no objection if he is regularised in the post of Loading Supervisor in Tech. & Supervisory Grade-C with effect from the date of this order and the wages be paid from the date of the order. I find that the stand of the workman is very reasonable.

5. In the result I find that the action of the management in not regularising Sri M. D. Chaturvedi as Loading Supervisor in Tech. & Supervisory Grade-C in terms of the Schedule of the Reference was not justified.

Sri M. D. Chaturvedi, the concerned workman shall be regularised as Loading Supervisor in Tech. & Supervisory Grade-C with effect from the date of this order (30-11-1992) and he shall be given all the benefits of the post of Loading Supervisor in Tech. & Supervisory Grade C w.e.f. 30th November, 1992.

This is my award.

N. K. SAHA, Presiding Officer

नई दिल्ली, 17 दिसम्बर, 1992

का. प्र. 109-- औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूच में, केन्द्रीय सरकार द्वारा निम्नलिखित शर्तों में ही सी. लि. के प्रवर्तन के संबंध में निम्नलिखित और उनके कर्मचारों के बीच झूठसंघ में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, आसंसोल के पंचपट को प्रकाशित करती है, औद्योगिक सरकार को 17-12-92 को प्राप्त हुआ था।

[संख्या 22012/210/92 आई आर (सी-II)]

राजा लाल, डेस्क अधिकारी

New Delhi, the 17th December, 1992

S.O. 109.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government

Industrial Tribunal, Asansol as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Dalmia Colliery of M/s. E.C. Ltd. and their workmen, which was received by the Central Government on 17-12-1992.

[No. L-22012/210/92-IR (C-II)]

RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, ASANSOL

Reference No.45/92

PRESENT :

Shri N. K. Saha, Presiding Officer.

PARTIES :

Employers in relation to the Management of Dalmia Colliery of M/s. E.C. Ltd.

AND

Their Workmen.

APPEARANCES :

For the Employers—Sri P. K. Das, Advocate.

For the Workman—None.

INDUSTRY : Coal

STATE : West Bengal

Dated, the 25th November, 1992

Part of the Award

				ANNEXURE
Name of the Workman	Date of joining	Worked as	Educational Qualification	Minimum of Cat. I entitled
1. Shri Kajal Kr. Tewary	9-7-87	Drill Dpp. Helper.	Higher Secondary	Cat. I
2. Shri Sarjy Shaw	4-12-85	Auto Elec. Helper.	School Final	Cat. I
3. Shri Sukumar Gupta	23-7-87	Surv. Trainee	School Final	Cat. I
4. Shti Bikash Roy	4-12-85	Fitter Helper	School Final	Cat. I
5. Shri Parameswar Yadav	4-12-85	Auto Fitt. Helper	School Final	Cat. I
6. Shri Pinaki Mukherjee	10-3-87	Stores Clerk	School Final	Cat. I
7. Shri Aswini Kr. Mondai	6-8-86	F.P. Helper	Higher Secondary	Cat. I
8. Shri Bochan Rajbhar	7-5-85	Auto Fitt. Helper	S.E.	Cat. I

नई दिल्ली, 17 दिसम्बर, 1992

का. प्र. 110—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) को धारा 17 के अनुसरण में, केन्द्रीय सरकार फूड कॉर्पोरेशन ऑफ इंडिया के प्रबन्धन के संबंध निपाजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलौर के पंचवट को प्रकाशित करती है, जो केन्द्रीय सरकार का 17-12-92 को प्राप्त हुआ था।

[संख्या एल-22012/307/एच/91 आई आर (सी II)]

राजालाल, डेस्क अधिकारी

New Delhi, the 17th December, 1992

S.O. 110.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Food Corporation of India and their

AWARD

The Government of India in the Ministry of Labour in exercise of the powers conferred on them by clause (d) of sub-section (1) and sub-section (2-A) of Section 10 of the Industrial Disputes Act, 1947, has referred the following dispute to this Tribunal for adjudication vide Ministry's Order No. L-22012/210/92-IR (C-II) dated 29-10-1992.

SCHEDULE

"Whether the action of the management of Dalmia Colliery of E.C. Ltd., in denying Cat. I wages to the dependents of ex-employees (as per annexure), according to the letter No. CMD/ECL/C-6/B(R)/79/2800 dated 2-11-79 is legal and justified? If not, to what relief the workmen are entitled to?"

2. The Order of Reference in this case was received by this Tribunal on 9-11-92. Thereafter a regd. notice was issued to both the parties asking the parties to file written statement on 25-11-92 (today). The management has appeared today after receipt of the notice. But none has appeared on behalf of the union and no step has been taken. I find from the record that the A/D Card showing service of notice upon the General Secretary of the union has come back. It appears that the notice was received by the General Secretary on 14-11-1992.

3. It appears to me that the union is no longer interested to proceed with the case as even after service of notice the union has not come to contest the case. In the result I have no other alternative but to pass a no dispute award. Accordingly a no dispute award is passed in this case.

N. K. SAHA, Presiding Officer

workmen, which was received by the Central Government on 17-12-1992.

[No. L-22012/307/F/91-IR (C-II)]

RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated this 30th day of November, 1992

PRESENT :

Shri M. B. Vishwanath, B.Sc. B.L., Presiding Officer.

Central Ref. No. 36/92

I PARTY :

The Dist. Chairman, FCIEU, Reg. No. 2237, Bangalore Dist. Unit, FCI, Dooravaninagar, Bangalore-16.

V/s.

II PARTY :

The Sr. Regional Manager, Food Corporation of India, Mission Road, Pallavi Complex, Subbalah Circle, Bangalore-27.

AWARD

In this reference made by the Hon'ble Central Government by its order No. L-22012/307/F. 91-IR (C-II) dated 26-3-92] 3-4-92 under Section 10(1)(d) of I. D. Act the point for adjudication as per schedule to reference is :

"Whether the action on the part of the management of Food Corporation of India, Bangalore, in denying the promotion and seniority to the workman Smt. Vijayalakshmi with effect from 31-12-1984 is justified? If not, to what relief the workman is entitled to?"

2. In the claim statement it is contended :-

The I party workman has been the employee of the II party. She joined the service on 5-1-71. She was promoted as Asst. Grade-II by order dated 8-3-76. She reported for duty on 18-5-76. Narayanapai, Dharmarajan, B. Rajagopal and Venkatakrishnan are all juniors to the I party workman since the I party workman had been promoted to Asst. Grade-II far earlier than those employees. In spite of this in the Seniority list of A.G. II (Accounts) as on 31-12-82 the workman and some of colleagues namely M/s. R. Narayana Swamy, K. R. Kodandaraman, R. Kumar who had joined far ahead of the aforesaid persons had been placed at Sl. Nos. 56, 55, 57 and 58 respectively, while their juniors as aforesaid i.e., M/s. V. M. Venkatakrishnan, B. Rajagopal, K. Narayana Pai, Dharmarajan have been placed at Sl. Nos. 20, 28, 29, 30 respectively in the said seniority list. This workman joined service on 6-1-71 Shriyuths R. Narayana Swamy also joined on 6-1-71 while Sri Kodanda Raman and Kumar joined on 12-1-71 and 15-1-71 respectively. As against this the said M/s. Venkatakrishnan, Rajagopal, Narayana Pai, Dharmarajan, had joined duty on 7-5-71, 16-8-71 and 19-8-71 respectively. The workman has been representing from the beginning to set right the anomaly in the seniority position. The II party has not certified the mistake. Kodanda Raman, Narayanaswamy and Kumar had raised the industrial dispute in C.R. 148/87 in this Tribunal. This Tribunal passed an award in their favour. This workman is senior to said Narayanaswamy and Kumar. When this Tribunal passed an award holding that Narayanaswamy and Kumar are entitled to promotion as A.G. I (Accounts) this workman should have been automatically promoted by the II party. The II party has refused to promote the I party workman on the ground that she was not a party to the said reference. The I party workman is entitled to be promoted as A.G. I w.e.f. 31-12-84. The I party is entitled to an award directing the II party to re-do the seniority list of A.G. II and promote her as A.G. I (Accounts) w.e.f. 31-12-84 with consequential benefits.

3. In the counter statement it is contended by the II party :

It is true that the I party workman is an employee of the II party. It is true that the I party workman was promoted as A.G. II as per order dated 8-5-76. It is true that Venkatakrishnan, Rajagopal, Narayanapai and Dharmarajan are placed above the I party workman. But it is not correct to say that they are juniors to the claimant. The seniority list has been prepared according to procedure and law. It is true that I party workman joined service on 6-1-71 and Kodandaraman and Kumar joined service of II party on 12-1-71 and 15-1-71 respectively. But Kodandaraman, Narayanaswamy and Kumar raised industrial dispute in C.R. 148/87 and in view of the order of this Tribunal the seniority list has been corrected. The present claimant did not agitate the matter then. The II party did not consider the claim of the I party since she was not a party to C.R. 148/87. The II party implemented the award in C.R. 148/87 and promoted the said three persons Kodandaraman, Narayanaswamy and Kumar. Then the I party did not raise any dispute. She has raised the dispute subsequently. If the seniority list is

now changed, it would affect the interest of other employees. The claim of the I party has to be rejected.

4. The sum and substance of the case of the I party workman is even as per defective seniority list of the officious A.G. II (Accounts) as on 31-12-82 she is senior to Kodandaraman, R. Narayana Swamy and R. Kumar. These three officials challenged the seniority list and their date of promotion. Their case was that they should come above Narayana Pai and Dharmarajan. In this regard there was a reference in C.R. 148/87 before this Tribunal. This Tribunal (my learned Predecessor) by its award dated 7-4-88 held that Narayanaswamy, Kodandaraman and R. Kumar were entitled to be promoted as A.G. I w.e.f. 8-2-85. The xerox copy of this award in C.R. 148/87 has been produced. The learned counsel for the II party did not dispute the said award.

5. It is admitted that the award passed by this Tribunal in C.R. 148/87 has been implemented by the II party.

6. In the present reference the case of the I party workman Smt. D. R. Vijaya Lakshmi is that she should have been promoted to A.G. I from A.G. II (Accounts) even prior to R. Narayanaswamy and two others. The xerox copy of the defective seniority list of A.G. II (Accounts) as on 31-12-82 has been produced. This is not disputed. It is clear from the seniority list that D. R. Vijaya Lakshmi is at Sl. No. 56, whereas R. Narayanaswamy is at Sl. No. 57 and R. Kumar is at Sl. No. 58 and K. R. Kodandaraman is at 55. Both the present I party workman and R. Narayana Swamy have joined service under the II party on the same day, viz., 6-1-71. Since the award in C.R. 148/87 has been implemented by the II party and since the present I party workman is above R. Narayanaswamy, she is entitled to come above R. Narayanaswamy and she is entitled to be promoted on the same day R. Narayanaswamy was promoted or just prior thereto. The present reference is arising because the II party did not promote the present workman prior to Narayanaswamy on the ground that the present I party workman was not a party to C.R. 148/87. In view of the position in the seniority list, I am clearly of opinion, the I party workman is entitled for promotion alongwith R. Narayanaswamy and should be placed above him.

7. It is argued by the learned counsel for the II party that there is delay by the I party workman in raising this dispute. This is no ground to deny her the promotion to which she is entitled. It is argued by the learned counsel for the II party that the benefit of the award in C.R. 148/87 cannot be given to I party. This argument has no force in view of the present reference arising out of the dispute raised by the I party workman. It is also argued that the seniority cannot be disturbed frequently. This argument cannot be accepted since an employee entitled to promotion cannot be denied the just promotion.

8. The I party has stated in the claim statement that she has to be promoted retrospectively w.e.f. 31-12-84 on which day Dharmarajan and Narayanapai were promoted as A.G. I (Accounts). She has not produced any document to show that Dharmarajan and Narayana Pai were promoted on 31-12-84. I have carefully gone through the award passed by my learned Predecessor in C.R. 148/87. It is clear from para 3 of the award of my learned Predecessor that Narayana Pai and Dharmarajan were promoted to the post of A.G. I by order dated 8-2-85 and so an award was passed declaring that the three employees Narayanaswamy, Kodandaraman and R. Kumar were entitled to be promoted as A.G. I (Accounts) w.e.f. 8-2-85. Bearing this date 8-2-85 in mind, I pass the appropriate order.

ORDER

It is hereby declared that I party workman Smt. D. R. Vijaya Lakshmi is entitled for promotion as A.G. I (Accounts) w.e.f. 8-2-85.

The II party management shall grant all the consequential reliefs to the I party workman. But she is not entitled to back wages in the promotional post.

Reference accepted as stated herein.

Submit to Government.

(Dictated to Stenographer, typed by him, corrected, signed by me on this 30th day of November, 1992).

M. B. VISHWANATH, Presiding Officer

सई दिल्ली 17 दिसम्बर 1992

का. आ. 111.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुच्छेद में, केन्द्रीय सरकार फूड कॉर्पोरेशन ऑफ इंडिया के प्रबन्धन के संघर्ष नियोजकों और उनके कर्मचारों के बीच अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, मद्रास के पक्ष पर की प्रस्तावित करता है, जो केन्द्रीय सरकार का 17-12-92 की प्राप्त हुआ था।

[संख्या एल 42012/30/83-डी II (बी)-डी IV (बी)]

राजा लाल, डेस्क अधिकारी

New Delhi, the 17th December, 1992

S.O. 111.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Madras as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Food Corporation of India and their workmen, which was received by the Central Government on 17th December, 1992.

[No. L-42012/30/83-D.II(B)/D-IV(B)]

RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMILNADU MADRAS

Monday, the 28th day of September, 1992

PRESENT:

Thiru M. Gopalaswamy, B.Sc., B.L., Industrial Tribunal.
Industrial Dispute Nos. 16 and 24 of 1984

(In the matter of the dispute for adjudication under section 10(1)(d) of the Industrial Disputes Act, 1947 between the workmen and the management of Food Corporation of India, Madras).

In I.D. 16 of 1984

BETWEEN

Thiru M. R. Venkatesan,
Work Assistant, J. Block,
No. 70, Anna Nagar East,
Madras-600102.

AND

The Senior Regional Manager,
Food Corporation of India,
Regional Office, 5/54, Greaves Road,
Madras-600006.

REFERENCE:

Order No. L. 42012(31)/83-D.II(B)/D.IV(B), dated 24th February, 1984 of the Ministry of Labour and Rehabilitation, Department of Labour, Government of India, New Delhi.

In I.D. 24 of 1984.

BETWEEN

Thiru K. T. Chandra Babu,
37, Valluvar Street, Arumbakkam,
Madras-6.

AND

The Regional Manager,
Food Corporation of India,
No. 5/54, Greaves Road, Madras.

REFERENCE:

Order No. L. 42012(30)/83-D.II(B)/DV, dated 14-3-84 of the Ministry of Labour and Rehabilitation, Department of Labour, Government of India, New Delhi.

These disputes coming on for final hearing on Tuesday, the 1st day of September, 1992 upon perusing the reference, claim and counter statements and all other material papers on record in both the disputes upon hearing the arguments of Thiru S. Vaidyanathan for Row and Reddy, Advocates appearing for the workmen in both the disputes and of Thiru N. V. Balasubramanian, Advocate appearing for the management in both the disputes and these disputes having stood over till this day for consideration, this Tribunal made the following common:

I.D. No. 16 of 1984: This dispute between the workman and the management of Food Corporation of India, Madras-6 arises out of a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 by the Government of India in its Order No. L. 42012(31)/83-D.II(B), dated 24-2-84 of the Ministry of Labour, for adjudication of the following issue:

"Whether the action of the management of the Food Corporation of India, Madras in terminating the services of Smt. M. R. Venkatesan, NMR Works Assistant at their Avadi Depot w.e.f. 28-12-77 and not considering him for employment while appointing fresh hands is justified? If not, to what relief is the workman concerned entitled?"

(2) The allegations in the claim statement are as follows: The Petitioner-workman Thiru M. R. Venkatesan is a graduate and he was appointed as Work Assistant on NMR basis by the Respondent-Management at Avadi in the Construction and Maintenance Section with effect from 1-9-76. The work in that Section comes under the Permanent Establishment. However, the Petitioner's services were abruptly stopped with effect from 28-12-77 along with many others without assigning any reason and without giving any notice as required under law and without paying him any retrenchment compensation even though he had put in continuous service of 1 year and 4 months and juniors to the Petitioner who are absorbed in regular service. During the conciliation, the Respondent-Corporation prepared four separate draft settlements to be signed under section 12(3) of the I.D. Act. As the said draft settlement was unreasonable and arbitrary, the Petitioner refused to sign the settlement. The petitioner states that clause (iv) of the Settlement was impossible of performance in so far as it requires the Petitioner to get his name sponsored by the Employment Exchange. It is anybody's knowledge that Employment Exchange cannot sponsor a person who is already in service whether temporary or permanent. Further under the Rules relating to Employment Exchange, a person is ineligible to get himself registered if he has crossed the age of 25 years. In as much as the Petitioner had crossed the age of 25 years, he could not be sponsored by the Employment Exchange. The Respondent Corporation had regularised the service of 30 employees even though they were not sponsored by the Employment Exchange. The persons who signed the settlement even though they were reinstated are kept as temporary hands without regularisation on the ground that they have not complied with the requirement of clause (iv) of the settlement. But many other juniors have been regularised long ago. In the circumstances they have filed WP. No. 1241 of 1983 in the High Court which is pending. Consequent upon the Petitioner's refusal to sign the settlement, the management declined to reinstate the Petitioner. Since the conciliation talks failed, the reference for adjudication is made to this Tribunal. The Respondent Corporation from its very inception has been engaging labour on casual and temporary basis (NMR basis).

who were continued for a long period and therefore, a necessity arose to absorb them in the regular services of the Corporation. Hence the Respondent Corporation by notification dated 4-2-76 issued an amendment to Regulation 9(a) by way of proviso. The proviso shows that the temporary employees who had been engaged beyond 3 months are entitled to be absorbed in permanent posts irrespective of the date of their first appointment. Further it does not require such temporary/casual workers to get them sponsored by the Employment Exchange. The services of the Petitioner and others were abruptly dispensed with by mere oral instructions. The circular dated 7-9-77 is inconsistent with the proviso to Regulation 9(a). Many of juniors to the Petitioner were made permanent besides engaging fresh hands and absorbing them in regular vacancies. Hence the action of the Respondent is violative of principles of natural justice and provisions of Section 25-G and 25-H of the I.D. Act. Any cessation of work of the Petitioner between 1-9-76 and 28-12-77 and after 28-12-77 till date is not due to any fault of the petitioner but is solely due to the arbitrary and illegal action of the Respondent Corporation. The provisions of Section 25-B(2) of the I.D. Act does not at all apply to the Petitioner. The action of the Respondent Corporation in terminating the services of the Petitioner with effect from 28-12-77 is not justified and direct the Respondent to reinstate the Petitioner with continuity of service, full back wages and other attendant benefits.

(3) I.D. No. 24 of 1984: This dispute between the workman and the management of Food Corporation of India, Madras arises out of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947 by the Government of India, in its Order No. I. 42012(3)/83-D.II(B)/D.IV(B)/D.V. dated 14-3-84 of the Ministry of Labour and Rehabilitation, for adjudication of the following issue:

"Whether the action of the management of the Food Corporation of India, Madras in terminating the services of Shri K. T. Chandrababu, NMR Work Assistant at their Arakonam Depot (Construction work) w.e.f. 7-12-77 and not considering him for employment while appointing fresh hands, is justified? If not, to what relief is the concerned workman entitled?"

(4) The allegations in the claim statement are as follows: The Petitioner Thiru K. T. Chandrababu was appointed as Work Assistant Grade-I on 9-2-76 in the Construction and Maintenance Section at Avadi. The Respondent Corporation has arbitrarily and illegally failed to provide work for the Petitioner and ousted him with effect from 1-3-77 to 31-5-77, while giving work to his juniors. The Petitioner has been in continuous service for more than a year and as such the Respondent could not have denied employment without complying with the mandatory provisions of Section 25-F of the I.D. Act. The Petitioner was re-engaged on 1-6-77 and continued to work till 7-12-77 when his services were again abruptly discontinued by the Respondent by oral instructions without assigning any reason and without paying any compensation or notice as required under Section 25-F of the I.D. Act. Hence the termination of the services of the Petitioner is void ab-initio. The Respondent illegally and unjustly claimed before the Conciliation Officer that he has not completed 240 days in a period of one year and on that plea it failed to compromise the dispute. Hence, this reference. The cessation of work between 1-3-77 and 31-5-77 and after 7-12-77 till date is not due to his fault but is solely due to the illegal and arbitrary action of the Respondent Corporation. The Respondent has failed to comply with mandatory provisions of Sections 25-F of the I.D. Act. The Petitioner had put in more than a year service even as on 28-12-77 when he was illegally denied employment without complying with the provisions of Section 25-F of the I.D. Act and violating Sections 25-G and 25-H of the Act. The Respondent Corporation by a notification dated 4-2-76 issued an amendment to Regulation 9(a) by way of proviso. The proviso shows that the temporary employees who had been engaged beyond 3 months are entitled to be absorbed in permanent posts irrespective of the date of their first appointment. The circular dated 7-9-77 is inconsistent with the proviso to Regulation 9(a) it is illegal and void and cannot

be given effect to. The Petitioner is suffering without employment ever since his termination of service with effect from 7-12-77. The action of the Respondent—Corporation in terminating the services of the Petitioner with effect from 7-12-77 is not justified and direct the Respondent to reinstate the Petitioner with continuity of service, full back wages and other attendant benefits.

(5) The Respondent in a common counter in respect of both the Industrial Disputes state as follows: The worker Thiru M. R. Venkatesan (I.D. 16/84) was employed by the Respondent on NMR basis (casual worker) in Construction division from 1-9-76. The work in respect of which he was employed was of a temporary nature and was charged to contingency fund of the Respondent. It is true that Thiru Venkatesan had worked for 106 days in 1976 and 243 days in 1977 (ie) a total of 349 days. He was given wages on a daily rate basis and he was not appointed through employment exchange. Services of Thiru Venkatesan and similarly placed other workers, were terminated as their continuance in service was prohibited by F.C.I. Staff regulations. No employee who was junior to Thiru Venkatesan had been regularly appointed. Kuhlakshmi and Kamatchi were appointed as they were sponsored by the Employment Exchange. The Respondent has no power to appoint NMR workers on a permanent basis without their being sponsored by the Employment Exchange. Thiru Venkatesan cannot claim retrenchment compensation because Section 25-F of the ID Act is not applicable to him. Between NMR Workers and the Respondent, a settlement was reached in terms of which they were entitled to seek employment under the Respondent only if they were sponsored by the Employment Exchange. Thiru Venkatesan refused to accept the said settlement. He did not press his right to employment under the Respondent until 1982 when he applied to the Regional Labour Officer for reinstatement. Regularisation of 30 employees mentioned in para (4) of the claim statement without sponsorship of the Employment Exchange is valid as it was made prior to 25-1-76. On that date, the amended regulation 9(a) came into effect. The benefit of the said amendment will go only to those employees appointed prior to 25-1-76 and not those appointed later such as the claimant Thiru Venkatesan. The Petitioner is not entitled to any benefit in terms of the amended regulation 9(a). Both Thiruvalargal Venkatesan and Chandrababu have not been sponsored by the Employment Exchange as required by the settlement or amended regulation 9(a) and the Employment Exchange Act. Both the claimants have not sought any redressal till 1982 after the retrenchment in 1977. In any view of the matter, retrenchment of these claimants does not violate the provisions of the ID Act. The claims are liable to be dismissed.

(6) The points for determination in I.D. No. 16 of 1984 are:

(1) Whether the termination of services of the workman Thiru M. R. Venkatesan on 28-12-77 without payment of retrenchment compensation is lawful and just?

(2) Whether the Respondent's failure to consider Thiru M. R. Venkatesan for giving him fresh employment while giving appointment to other new recruits is justified?

(3) To what relief?

(7) The points for determination in I.D. No. 24 of 1984 are:

(1) Whether the termination of services of Thiru K. T. Chandrababu with effect from 7-12-77 without payment of retrenchment compensation is lawful and just?

(2) Whether the Respondent's failure to consider Thiru K. T. Chandrababu for giving him fresh employment while giving appointment to other new recruits is justified?

(3) To what relief?

(8) The claimant in I.D. No. 24 of 1984 Thiru K. T. Chandrababu has given evidence as W.W. 1. for himself and also for Thiru M. R. Venkatesan, claimant in I.D. 16 of 1984. On the side of the Respondent the Deputy Manager of the Respondent Thiru Chandrasekaran; Assistant Manager Thiru Pakkirisamy and Deputy Manager (Personnel) Thiru Ramachandran have given evidence as M.Ws. 1 to 3. These two I.Ds. are clubbed for joint disposal. Exs. W1 to W24 and Exs. M1 to M27 were marked.

(9) The worker Thiru Venkatesan was given employment by the Respondent as Work Assistant (which is a skilled job) on daily wages Rs. 10.25, in the category of NMR-casual worker, in the construction works from 1-9-76 under Ex. W.4 order. W.W.1 Thiru Chandrababu was initially appointed as a Work Assistant (which is a skilled job) with effect from 9-2-76. Written order of this initial appointment of Thiru K. T. Chandrababu is not produced as evidence. He was terminated from service on 1-3-77 and again given re-employment in the same job on contract basis under Ex. W.3 dated 13-8-76 (same as Ex. M.2). Thiru Chandrababu W.W.1 continued to work till his services were terminated on 7-12-77. The conciliation minutes relating to Thiru Chandrababu is marked as Ex. W.17 (same as Ex. M.6). In this minutes, there is a mention that the claimant Thiru Chandrababu has put in 253 days of continuous work. The Respondent in the common counter, has not denied that Thiru Chandrababu has put in 240 days of work in a period of 12 months prior to 7th December, 1977. Therefore we can safely conclude that the workman Thiru Chandrababu who is WW1 has worked for more than 240 days continuously so that he might claim the benefits of section 25-F of the Industrial Disputes Act, 1947, subject to Ex. W.3.

(10) The Claimant Thiru M. R. Venkatesan whose employment commenced from 1-9-76 under Ex. W.4 order was terminated from service on 28-12-77. The conciliation minutes relating to Thiru Venkatesan, marked as Ex. W.13 shows that he has refused to accept a settlement which obliged him to seek fresh employment under the Respondent only through Employment Exchange. The fact that Thiru Venkatesan has worked for more than 240 days in the previous year is admitted by the Respondent.

(11) Therefore there is no controversy over the length of service put in by both these workmen, amounting to more than 240 days as required by Section 25-B of the I.D. Act. The stand of the Respondent based on an amendment, namely addition of a proviso to Regulation 9(a) of F.C.I. Staff Regulation, 1971 as found in Exs. M.1 and M.2 is that all temporary employees who were recruited upto 25-1-76 and then deprived of work would be considered for re-employment by the Respondent along with other candidates for direct recruitment, only if such erstwhile temporary employees were sponsored by the Employment Exchange and that without such sponsorship, temporary employees who had been sent out, will not be considered for re-employment. Such a restraint against the former temporary employees who were initially recruited upto 25-1-76, namely, that they should be sponsored by the Employment Exchange, cannot be said to militate against law. The claimants in these two industrial disputes, have been denied re-appointment by the Respondent, by extending the principle of requiring employment exchange sponsorship as a pre-condition, in terms of the circulars Ex. W.2 and W.7 and also the amended Regulation 9(a) as shown in Exs. M1 and M2. Hence by any reckoning we cannot conclude that the failure of the Respondent to give re-employment to the claimants is illegal or unjust. The appointments of Kunhi Lakshmi and Kamatchi have been made through Employment Exchange and hence the fact that they were juniors or were appointed subsequent to the claimants cannot advance and strengthen the case of the claimants who were not sponsored by the Employment Exchange. Hence point No. 2, in both the I.Ds should be answered against the respective claimants.

(12) In Ex. W.8 which is a circular issued by the personnel officer of the Respondent, there is a clear admission of the correct legal position that retrenchment compensation should be paid to even casual workers who have put in not less

than 240 days of continuous work. The claimant Thiru M. R. Venkatesan whose services as Work Assistant, employed on Casual and NMR basis have been terminated by the Respondent without complying Section 25 F of the I.D. Act. Denial of employment to him is evidently retrenchment within the meaning of Section 2(oo) of I.D. Act.

(13) But in the case of Thiru Chandrababu who was employed on the contract basis for a period of six months or until the completion of the work for which he is employed in terms of Ex. W.3 denial of employment has been made in terms of the contract Ex. W.3 and hence his loss of employment cannot amount to retrenchment in the light of section 2(oo) of the I.D. Act. Therefore I hold that denial of employment to Thiru K. T. Chandrababu is lawful and in accordance with the contract and hence he is not entitled to any relief. Both these claimants have become employees under the Pullavan Transport Corporation Ltd., Madras admittedly after they were ousted by the Respondent. Therefore, the claimant Thiru Venkatesan has no case for seeking re-employment under the Respondent on the proven ground that his retrenchment is unlawful. He must be content with compensation which, in my view, can be quantified at Rs. 12000. Except this monetary relief, I do not see any justification for directing the reinstatement of Thiru Venkatesan under the Respondent. We have already observed that denial of employment to Thiru Chandrababu is not retrenchment and it has been done as a result of expiry of contract of employment and therefore he is not entitled to any relief. The points in both the Industrial dispute are answered accordingly.

(14) In I.D. 16/84

In the result, an award is passed as follows :

The Respondent is directed to pay a sum of Rs. 12000 to the workman Thiru M. R. Venkatesan and in other respects the Industrial disputes will stand dismissed without costs.

(15) In I.D. 24/84.

An award is passed dismissing the claim of the workman Thiru K. T. Chandrababu.

Dated, this 28th day of September, 1992.

THIRU M. GOPALASWAMY, Industrial Tribunal

WITNESS EXAMINED

For workmen

W.W.1—Thiru K. T. Chandrababu (workman in I.D. 24/84).

For Management

M.W.1.—Thiru R. Chandrasekaran.

M.W.2.—Thiru S. Pakkiriswamy.

M.W.3.—Thiru G. Ramachandran.

DOCUMENTS MARKED

For Workman

Ex. W.1 4-2-76—Notification introducing amendment to Regulation 9(a) of the Staff Regulations 1971 (copy).

Ex. W.2 11-2-76—Circular issued by the Joint Personnel Manager clarifying the intend purpose of the amendment regulation 9(a) (copy).

Ex. W.3 13-8-76.—Appointment order given to Thiru K. T. Chandrababu (copy).

Ex. W.4 30-8-76.—Appointment order given to Thiru M. R. Venkatesan.

- Ex. W.5 18-2-77.—Termination order issued to Thiru K. T. Chandrababu (copy).
- Ex. W.6 5-7-77.—Letter from the Executive Engineer to Thiru M. R. Venkatesan asking details about his bio-data (copy).
- W.7 7-9-77.—Circular issued by the Personnel Manager about the Regulation 9(a) and its subsequent amendment (copy).
- W.8 28-6-78.—Circular issued by the Personnel Manager stating that the watchman as workman under the I.D. Act. (copy).
- W.9 8-6-82.—Office order about the settlement.
- W.10 16-6-82.—Memorandum of the settlement U/s. 12(3) of the I.D. Act between the workman & the Management of Food Corporation of India Madras, (copy).
- W.11 13-7-82.—Letter from Thiru M. R. Venkatesan to the Asst. Labour Commissioner-central, Madras (copy).
- W.12 19-7-82.—Conciliation notice (copy).
- W.13 29-3-83.—Minutes of the conciliation proceedings (copy).
- W.14 2-4-83.—Conciliation failure report (copy).
- W.15.—Compensation statement showing the pay particulars between PTC & FCI during the year January '78 to Sept. 1986 for Thiru K. T. Chandrababu (copy).
- W.16.—Statement showing the facilities extending between PTC & FCI for Thiru K. T. Chandrababu (copy).
- W.17 29-3-83.—Minutes of conciliation proceedings.
- W.18 28-10-77.—Appointment order issued to Thiru K. T. Chandrababu as work assistant.
- W.19.—Xerox copy of identity card issued to Thiru K. T. Chandrababu.
- W.20.—Specimen form showing the particulars of name, caste, date of birth, educations, qualification etc.
- W.21.—Statement showing service particulars of daily rated staff (xerox copy).
- W.22.—Letter from Thiru K. T. Chandrababu to The Asst. Labour Commissioner C-II, Madras-6 (xerox copy).
- W.23 27-3-81.—Letter from the Senior Regional Manager of the Management furnishing the vacancy position of entry level posts in the Engineering Cadre (xerox copy).
- W.24 15-2-91.—Appointment order issued to Thiru K. P. Addaikkalasamy, (xerox copy).

For Management:

- Ex. M.1 4-2-76.—Gazette Notification, to amend the Food Corporation of India (staff) Regulation, 1971, (copy).
- M.2 11-2-76.—Circular of the management which has decided to add further proviso to Regulation 9(a) (xerox copy).
- Ex. M.3 13-8-76.—Offer of appointment issued to Thiru K. T. Chandrababu on contract basis for the post of Work Asst. in the Management (copy).
- Ex. M.4 7-9-77.—Circular of the Management regarding regularisation of adhoc/daily rated employees (xerox copy).
- Ex. M.5 4-4-79.—Appointment order issued to 54 persons NMR (xerox copy).
- Ex. M.6 29-3-83.—Minutes of conciliation proceedings between the Management & Thiru K. T. Chandrababu & M. R. Venkatesan (copy).
- M.7.—Details of staff engaged on NMR basis as on 31-12-76 (copy).
- M.8.—Service particulars of Thiru M. R. Venkatesan from 31-8-76 to 29-12-77.
- M.9.—20-10-84. Letter from PTC works, Madras to the management furnishing the service particulars of Tvl. K. T. Chandrababu & M. R. Venkatesan.
- M. 10. 18-8-86.—Letter from PTC Ltd., Madras to the Management informing Tvl. K. T. Chandrababu & M. R. Venkatesan were working as Tracer and Art respectively.
- M.11 19-11-86.—Letter from PTC Ltd. Madras to the Management furnishing salary particulars of Tvl. K. Chandrababu & M. R. Venkatesan.
- M.12 21-1-78.—Appointment order issued to Miss. P. Kunhi Lakshmi as Work assistant skilled (xerox copy).
- M.13 21-1-78.—Appointment order issued to Miss. R. Kamatchi as work asst. skilled (xerox copy).
- M.14.—Statement showing the details of nominal muster roll staff working in Division II as on 20-3-79 (xerox copy).
- M.15 16-12-78.—Note requesting NMR for the month of January 1978 to engage NMR staff for day-to-day maintenance work (xerox copy).
- M.16.—Statement showing the details of compensation to the retrenched daily rated employees to the Engineering Division II of the Management. (xerox copy).
- M.17 -2-77.—Termination order issued to Thiru T. G. Shyamsundersingh (xerox copy).
- M.18 .. —do— Thiru R. B. Shanugam (xerox copy).
- M.19 18-2-77.— —do— Thiru K. T. Chandrababu (xerox copy).
- M.20 -2-77.— —do— Thiru K. K. Karunakaran (xerox copy).
- M 21 18-2-77.—do— Thiru T. K. Lakshminarayanan (xerox copy).
- M.22 -2-77.—do— Thiru A. M. Avudaiappan (xerox copy).
- Ex M.23 20-11-77.—Office order for engagement of Nominal Muster Rolls (xerox copy).
- Ex. M.24 7-3-79.—Interview for the post of Tracer from the District Employment Officer, Nandanam to Thiru T. G. Shyam Sundersingh.
- Ex. M.25 3-4-78.—Interview for the post of Tracer from the Management to Thiru T. G. Shyamsunder Singh.
- Ex. M.26 3-7-85.—Circular from the Management regarding ban of creation of posts/filling up of vacancies. (xerox copy).
- Ex. M.27 4-3-82.—Letter from Thiru K. T. Chandrababu to the Executive Engineer (Civil) FCI, Madras praying for reinstatement in service, backwages & other benefits. (xerox copy).

नई दिल्ली, 28 दिसम्बर, 1992

का. धा. 112-- जबकि, मैसर्स वेस्टर्न कोलफील्ड्स लि., कान्हा क्षेत्र के प्रबंधन के संघ में नियोजकों तथा उनके कामगारों संबंधी साहब लाल, सुन्दरलाल, इसरायल, महादेव, मोहम्मद अब्बार तथा सिराज खान प्रादि के बीच एक औद्योगिक विवाद विद्यमान है,

और जबकि, उक्त नियोजक तथा उनके कामगार औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 10-क की उप धारा (1) के अन्तर्गत एक लिखित करार द्वारा उक्त विवाद को माध्यस्थता के लिये भेजने पर सहमत है और उक्त माध्यस्थता करार की एक प्रतिकावली सरकार को भेज दी गई है।

अतः अब उक्त अधिनियम की धारा 10-क की उप धारा (3) के अनुसरण में, केन्द्रीय सरकार उक्त करार को एतद्वारा प्रकाशित करता है।

करार

(औद्योगिक विवाद अधिनियम, 1947 की धारा 10-क के अन्तर्गत) पक्षकारों के नाम :-

नियोजकों के प्रतिनिधि	कर्मचारियों के प्रतिनिधि
1. श्री दीपक मेवाड़, कामिक प्रबंधक, वेस्टर्न कोलफील्ड्स लि., कान्हा क्षेत्र, डाकघर दुर्गादा जिला छिन्वाड़ा,	1. श्री लोचन प्रसाद, अध्यक्ष, एस. के. एम. एस. (एटक) यूनियन बादामेट्टा
2. श्री एस. भागवत, उप कार्मिक प्रबंधक, कान्हा क्षेत्र, वेस्टर्न कोलफील्ड्स लि.	2. श्री पी. के. बनर्जी, महासचिव, एस के एस एस (एटक) यूनियन, बादामेट्टा

अतः पक्षकार निम्नलिखित विवाद को माध्यस्थता के लिये श्री एन. एस. मिश्रा, उप मुख्य कामिक प्रबंधक, वेस्टर्न कोलफील्ड्स लि. मुख्यालय (सेवा निवृत्त) के पास भेजने के लिए सहमत है :

"क्या सर्वश्री साहबलाल पुत्र श्री मांडू, सुन्दरलाल/लखनलाल इसरायल/साहिद, महादेव/मैयाज, मोहम्मद अब्बार/एस. के. इसहाक तथा सिराज खान/वसीर खान को नौकरी से निकालने/सेवाएं समाप्त करने की वेस्टर्न कोलफील्ड्स लि., कान्हा क्षेत्र के प्रबंधक की कार्यवाही कानूनी एवं स्थायीचित है ? यदि नहीं तो संबंधित कामगार किस अनुगोष के हकदार है ?

हम इस बात से भी सन्तुष्ट हैं कि विवाद का निर्णय हम दोनों पक्षकारों पर बाध्यकारी होगा।

कामगारों के उक्त विवादों के संबंध में पूरे तथा अन्तिम समझौते की शर्तों पर भी सहमति हो गयी है।

इस बात पर भी सहमति हो गयी है कि विवाद से तीन महीने के अन्तर अपना रजिस्ट्रार के डेने का अनुरोध किया जाएगा और यदि आवश्यक हो तो दोनों पक्षकारों के परामर्श से समय सीमा बढ़ाई जाएगी।

पक्षकारों के हस्ताक्षर

नियोजकों के प्रतिनिधि

1. (ह./-)
(दीपक मेवाड़)

2 GI/93-5

2. (ह./-)
(एस. भागवत)

संघ के प्रतिनिधि

1. (ह./-)
(लोचन प्रसाद)

2. (ह./-)
(पी. के. बनर्जी)

साक्ष्य

1. (ह./-)
(एस. के. श्रीवास्तव)

2. (ह./-)
(बी. एल. राज)

विवादक की सहमति

महाप्रबंधक,
वेस्टर्न कोलफील्ड्स लि.,
कान्हा क्षेत्र

प्रिय महोदय

संदर्भ :-काम "सी" में दिनांक 7/9/92 के करार संबंधी माध्यस्थता मामले के बारे में आपके कामिक प्रबंधक के साथ हुआ विचार विमर्श में एस. के. एम. एस. यूनियन संबंधी उपरोक्त मामले में विवादक के रूप में कार्य करने के लिये एतद्वारा अपनी सहमति देता हूँ।

(भवदीय),

(ह./-)

(एस. एस. मिश्रा)

सेवा निवृत्त उप मुख्य कामिक प्रबंधक
(वेस्टर्न कोलफील्ड्स लि. नागपुर)

[सं. एल-22025/6/92 आई आर० (सी-II)]

राजालाल, डैस्क अधिकारी

New Delhi, the 28th December, 1992

S.O. 112.—Whereas an industrial dispute exists between the employers in relation to the management of M/s. Western Coalfields Ltd., Kanhan Area, and their workmen S/Shri Sahab Lal, Sunder Lal, Israil, Mahadeo, Mohd. Abrar and Siraj Khan;

And whereas, the said employers and their workmen have by a written agreement under sub-section (1) of Section 10-A of the Industrial Disputes Act, 1947 (14 of 1947), agreed to refer the said dispute to arbitration and have forwarded to the Central Government a copy of the said arbitration agreement;

Now, therefore, in pursuance of sub-section (3) of Section 10-A of the said Act, the Central Government hereby publishes the said agreement.

AGREEMENT

(Under Section 10-A of the Industrial Disputes Act, 1947)

BETWEEN

Name of the parties

Representing Employer :

1. Shri Deepak Mewar, Personnel Manager, W.C. Ltd.,
Kanhan Area, P.O. Durgarha, Dist. Chhindwara.

2. Shri S. Bhargava, Dy. Personnel Manager, Kanhan Area, W.C. Ltd.

Representing Union :

1. Shri Lochan Prasad, President, S.K.M.S. (AITUC) Union, Chandametta.

2. Shri P. K. Banerjee, General Secretary, S.K.M.S. (AITUC) Union, Chandametta.

It is hereby agreed between the parties to refer the following issue to the arbitration of Shri S. S. Mishra, Dy. CPM, W.C. Ltd., Hqrs. (Retd.):

"Whether the action of the management of Western Coalfields Ltd., Kanhan Area in dismissing/terminating the srvcis of S/Shri Sahablael S/o Nandu, Sunderlal/Lakhanlal, Israil/Sahid, Mahadeo/Bhaiyaje, Mohd. Abrar/Sk. Ishaque and Siraj Khan/Basir Khan is legal and justified? If not, to what relief the workmen concerned are entitled to?"

We further agree that the decision of the arbitrator will be binding on both the parties.

It is agreed that this is in terms of full and final settlement in respect of the said issue of the workmen.

It is agreed that the arbitrator will be requested to kindly give the award within 3 months and if necessary, will extend the time limit in consultation with both the parties.

SIGNATURE OF THE PARTIES

Representing Employer :

1. (Sd/-) (DEEPAK MEWAR)

2. (Sd/-) (S. BHARGAVA)

Representing Union :

1. (Sd/-) (LOCHAN PRASAD)

2. (Sd/-) (P. K. BANERJEE)

Witnesses :—

1. Sd/- (S. K. Shrivastav)

2. Sd/- (D. L. Raj)

CONSENT OF THE ARBITRATOR

The Geerl Manager,
W.C. Ltd., Kanhan Area.

Dear Sir,

Ref:—Your PM's discussion regarding Arbitration case Agreement dt. 7-9-92 in Form 'C'.

I hereby give my consent to act as Arbitrator in the above mentioned case with the SKMS Union.

Yours faithfully,

(Sd/-)

(S. S. Mishra),

Retd. Dy. CPM (W.C. Ltd.),
Nagpur.

[No. L-22025/6/92-IR(C.II)]

RAJA LAL, Desk Officer

नई दिल्ली, 21 दिसम्बर, 1992

का. प्र. 113—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मद्रास पोर्ट ट्रस्ट मद्रास, के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारों

के बीच, अनुबंध में निम्नलिखित औद्योगिक विवाद के औद्योगिक अधिकरण मद्रास के पंचद को प्रकाशित करती है, जो केन्द्रीय सरकार को 21 दिसम्बर, 1992 को प्राप्त हुआ था।

[संख्या एन-33012/10/91 आई आर (निविद)]

के. वी. बी. उन्नी, डेस्क अधिकारी

New Delhi, the 21st December, 1992

S.O. 113.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Madras as shown in the Annexure in the industrial dispute between the employers in relation to the management of Madras Port Trust, Madras and their workmen which was received by the Central Government on the 21-12-92.

[No. L-33012/10/91-IR(Misc.)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU

Wednesday, the 2nd day of December, 1992

Industrial Dispute No. 47 of 1992

(In the matter of the dispute for adjudication under section 10(1)(d) of the Industrial Disputes Act, 1947 between the workman and the management of Madras Port Trust, Madras).

BETWEEN

Thiru P. Raju No. 5, L.H.S. Quarters, Spring Haven Road, Madras-600001.

AND

The Chairman, Madras Port Trust, Rajaji Salai, Madras-600001.

REFERENCE :

Order No. L-33012/10/91-IR(Misc.), dated 8-5-1992 of the Ministry of Labour, Government of India, New Delhi.

This dispute coming on this day for final disposal in the presence of Thiruvalargal A.L. Somayaji and R. Arumugam, Advocates appearing for the Management, upon perusing the reference and other connected papers on record and the workman being absent, this Tribunal passed the following.

AWARD

This dispute between the workman and the management of Madras Port Trust, Madras-1 arises out of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947 by the Government of India in its Order No. L-33012/10/91-IR (Misc.) dated 8-5-1992 of the Ministry of Labour, for adjudication of the following issue :

"Whether the management of Madras Port Trust is justified in dismissing the services of Shri R. Raju, Token No. 911 with effect from 24-5-1986? If not what relief is the concerned workman entitled to?"

(2) Parties were served with summons.

(3) In spite of several adjournments, Petitioner-workman was absent. No claim statement was filed.

(4) Today also, when the dispute is called, the Petitioner-workman is absent and no representation is made for him.

(5) Hence industrial dispute is dismissed for default.

Dated, this 2nd day of December, 1992.

THIRU M. GOPALASWAMY, Industrial Tribunal

नई दिल्ली, 22 दिसम्बर, 1992

का. घा. 114—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पण्डुरंग टिम्ब्लो इण्डस्ट्रीज मार्गाओ के प्रबन्धकों के संबंध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2 बम्बई पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 22 दिसम्बर, 1992 को प्राप्त हुआ था।

[संख्या एल 29012/34/89 आई धार (विधि)]

के. वी. बी. उन्नी, डेस्क अधिकारी

New Delhi, the 22nd December, 1992

S.O. 114.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Bombay as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of M/s. Panduranga Timblo Co. Industries Margao & their workmen, which was received by the Central Government on the 27-12-1992.

[No. L-29012/34/89-IR(Misc.)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, BOMBAY.

PRESENT

Shri P. D. APSHANKAR, Presiding Officer.
REFERENCE NO. CGIT-2/40 OF 1989.

PARTIES :

Employers in Relation to the Management of M/s.
Panduranga Timblo Industries, Margao.

AND

Thier Workmen

APPEARANCES :

For the Employer : Shri S. V. Cuncolienkar, Representative.

For the Workmen : Shri Subhas Naik, Representative.

INDUSTRY : MINES.

STATE : Goa.

Bombay, dated the 2nd December, 1992.

AWARD

The Central Government by their Order No. L-29012/34/89-IR(Misc.), dated 22-9-1989 have referred the following Industrial dispute to this Tribunal for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947.

"Whether the action of the management of M/s. Panduranga Timblo Industries, Margao in retiring Shri T. Mohammed, Assistant Mechanic w.e.f. 15-2-1989 is justified. If not, what relief the said workman is entitled to?"

2. The Joint Secretary of the Goa Mining Labour Welfare Union filed his Statement of Claim (Ex. 2) challenging the said action of the Management.

3. While the reference was thereafter at the stage of filing the Written Statement by the management, both the parties came to an amicable settlement and compromised the matter. The workman T. Mohammed agreed to accept a total amount of Rs. 51,566/- with the interest amount of Rs. 1,362.95 thereon in full and final settlement of his claim and to give up his claim for the reinstatement in services and the back wages, from the management, and the management

also agreed to pay the said amount to him in full and final settlement of his claim. Accordingly the abovesaid amounts were actually paid to the workman and the receipts dated 6-7-1991 and 18-2-1991 were passed by the workman in favour of the Management. The xerox copies of those receipts have been produced in these proceedings, and are at Exs. 5 and 6. The representative of the workman made an endorsement below an application of the management, "that" dispute pertaining to T. Mohammed has been settled and accepted, and Award may accordingly be passed". Therefore in view of the said settlement between the parties, which I find is quite in the interests of both the parties, the Award is passed in terms of the Settlement as above.

P. D. APSHANKAR, Presiding Officer.

नई दिल्ली, 23 दिसम्बर, 1992

का. घा. 115—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी. बी. एम. बी. के प्रबन्धकों के संबंध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चंडीगढ़ के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 22 दिसम्बर, 1992 को प्राप्त हुआ था।

[सं. एल 42012/148/91-डी 2 (बी) (पार्ट)]

के. वी. बी. उन्नी, डेस्क अधिकारी

New Delhi, the 23rd December, 1992

S.O. 115.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure, in the industrial dispute between the employers in relation to the management of B. B. M. B. and their workmen, which was received by the Central Government on 22-12-1992.

[No. L-42012/148/91-D. II(B) (Pt.)]

K. V. B. UNNY, Desk Officer.

ANNEXURE

BEFORE SHRI ARVIND KUMAR, PRESIDING OFFICER, GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH.

CASE NO. I. D. 56/92.

Ashok Kumar Vs. Bhakra Beas Management Board.

For the workman : Shri R. K. Singh.

For the management : Shri C. Lal.

AWARD

The Central Government vide gazette notification No. L-42012/148/91-D-2 (B), dated 11th of June, 1992 issued U/S 10(1)(d) of the I. D. Act, 1947 referred the following dispute to this Tribunal for adjudication :

"Whether the action of the Chief Engineer, Bhakra Beas Management Board, Nangal Township in terminating the services of Shri Ashok Kumar, Skilled Mazdoor w.e.f. 31-12-1990 is justified? If not, what relief is entitled to?"

2. Present case has been settled between the parties. In support of this settlement Shri R. K. Singh for the workman has placed this Settlement Ex. C-1 and prayed that the same shall be allowed to form part of the award. Mr. C Lal appearing on behalf of the management has stated that the said settlement has already been implemented in the terms of the settlement Ex. C-1. As per this Settlement petitioner has been taken back in service w.e.f. 1-9-1992 as skilled mazdoor on daily wage basis and it has also been agreed that the entire period from 1-1-1991 to 31-8-1992 shall be treated as leave of the kind due and remaining not covered by it shall

be treated as leave without pay, but with continuity of service with all intents and purposes. In view of the settlement Ex. C-1 and the terms mentioned above no dispute award is returned to the Ministry. Ex. C-1 shall form part of the Award.

Chandigarh :
Dated 25-11-1992.

ARVIND KUMAR, Presiding Officer.

नई दिल्ली, 23 दिसम्बर, 1992

का. धा. 116—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कलकत्ता टेलीफोन्स के प्रबन्धन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कलकत्ता के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 22 दिसम्बर, 1992 को प्राप्त हुआ था।

[संख्या एल 40012/14/86/डी-बी (पार्ट) 1]
के. वी. बी. उन्नी, डेस्क अधिकारी,

New Delhi, the 23rd December, 1992

S.O. 116.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Calcutta Telephones and their workman, which was received by the Central Government on 22-12-92.

[No. L-40012/14/86-D.II(B)(Pt.)]

K.V.B. UNNY, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

Reference No. 126 of 1988

PARTIES:

Employers in relation to the management of Calcutta Telephones

AND

Their workman.

PRESENT:

Mr. Justice Manash Nath Roy, Presiding Officer.
On behalf of employer—Mr. A. Hossain, Advocate.
On behalf of workman—Mr. J. C. Consul, Advocate.

STATE : West Bengal.

INDUSTRY : Telephones

AWARD

The dispute, whether the action of the Management of Calcutta Telephones (hereinafter referred to as the said Telephones), in terminating Shri Gopal Chandra Halder (hereinafter referred to as the said employee), from services, with effect from January 1978, was legal and justified and to what relief and from what date, he will be so entitled, was referred for adjudication, by the Appropriate Government, by their order of Reference No. L-40012/14/86-D.II (B) dated September 1, 1987, made under Section (2A) of the Industrial Disputes Act, 1947 (hereinafter referred to as the said Act). On due service of notices, the parties to the dispute entered appearance and completed their pleadings.

2. It was the case of the said employee that for 2 or 3 months, he was initially engaged in the present 77 Exchange, during 1976 and then, he was engaged on regular basis from January 15, 1977 and from that date, he worked continuously upto January 8, 1978 and thereafter, the Divisional

Engineer 77 Exchange, stopped his employment. In support of such statement of continuous employment, the said employee has relied on Annexure 'A' to his Written Statement, which is also marked as Ext. W-1. It would appear that the said exhibit was the personal record of employment in Muster Roll, showing him as daily rated mazdoor. I shall indicate the character of the said Exhibit and the manner in which the same was produced, hereafter, as much submissions on the same, were made by the parties.

3. The said employee has indicated that there was neither any charge sheet issued nor any complaint against him and as such, the termination as made or the manner in which the same was given effect or resorted to, was illegal, furthermore, as he was not also paid retrenchment compensation and any notice pay. It has been stated by the said employee that against such action of termination, which he also claimed to be illegal, 20 other employees approached the Regional Labour Commissioner (C), where he did not join, for intervention. He has stated that he did not join, that proceeding, as he was confident that the said Telephones, would give him the same treatment like others. This part of the statement has been retracted to a great extent at the time of hearing. He has also pointed out that the said 20 employees, ultimately succeeded in Reference No. 14 of 1981 and by the Award dated January 28, 1983, which held inter alia amongst others that the action of the said Telephones, in terminating the services of the workmen concerned, who had completed 240 days work, were illegal, improper and unjustified and as such, they were entitled to be reinstated with back wages. As indicated earlier that, the said employee was not a party to that proceedings, yet he has claimed that in spite of his repeated visits and claims, he received no justice from the officers concerned and at last, on June 1, 1983, he applied to the Regional Labour Commissioner (C), for intervention and thereafter, sent reminders for early action. He has indicated that such steps were not taken him until the cases of 17 employees were referred for adjudication, by an order dated February 12, 1988, before this Tribunal. The other particulars of that proceeding or what was the fate of the same, has not been mentioned or indicated.

4. The said employee has of course stated that in his case, the Labour Commissioner concerned, held several conciliation meetings and in such proceedings the said Telephones indicated by a communication dated April 8, 1986 that their office do not preserve records beyond 5 years and as such, it could not be said or verified, if the said employee had worked for 240 days in the years 1977 and 1978. As such it was stated that the formalities regarding payment of 15 days wages or service of 30 days notice, could not be followed and observed. It should be noted that, in terms of Appendix 3 and more particularly, for clause 9 thereunder, Muster Rolls are required to be retained for 5 years and Clause 3 of the same, indicates that Register of Works are to be maintained for 20 years and Clause 4 postulates that Labour Pay Sheets to be retained for all times. This Appendix was produced by the said Telephones, along with their Written Statement filed on May 15, 1990 and they have heavily relied on the same. The said Telephones, it should also be noted, elected by a petition filed on May 28, 1992, not to tender any evidence. It was also stated by the said employee that in the Conciliation, the said Telephones indicated that they were not in a position to pay any back wages, as the said employee was absenting from 1978. But they can consider to take him, in employment at the existing minimum wages on daily basis and under the existing provisions. The said employee has of course claimed that Class-I officers of Senior Scale of the said Telephones, could condone the intervening period of absence from doing work beyond 6 months. To establish the above facts and statements, the said employee produced an Annexure 'C' to his Written Statement, letter No. SAA 2035/XVI/III dated April 6, 1986, to the Assistant Labour Commissioner (Central), by one Sri J. D. Thakur of the said Telephones. The said letters has been marked as Ext. W-2 and that will show that the same as taken therein, was on the basis of the same amongst others, on retirement of casual labourers. The said Exhibit further recorded that casual labourers are totally non departmental staff and are taken purely on work charged establishment on casual/daily basis and do

not get other benefits like L.T.C. and Medical Bills. They of course get payments on 3 National Holidays.

5. It was the case of the said employee that joint conference, over the dispute was held on April 18, 1986, when the representative of the said Telephones agreed to take him back in employment on certain terms. To establish such meeting and the terms, he has, with his Written Statement disclosed as Annexure 'D', which has been marked as Ext. W-3, a minute dated April 18, 1986, signed by him, Sarbashree J. D. Thakur and A. K. Gupta on behalf of the said Telephones and the Assistant Labour Commissioner concerned. It would appear from that Exhibit that the said Telephones agreed to take back the said employee on the following terms:—

- (1) The employer agrees to take back the workman as a special case in service on the post of D.R.M. (Daily Rated Mazdoor) with effect from 1st May, 1986.
- (2) The employer also agrees that the workman would be treated on leave without pay from 9-1-78 to 30-4-1986. His services would be deemed to be continued within the above period for all the purpose except the payment of wages.
- (3) If the workman agrees not to claim the wages from 9-1-78 to 30-4-86 and if he also agrees that no claim for the wages of the above period would be made before any court, authority or any other forum.
- (4) The employer agrees to employ the workman on the D.R.M. category-III at Rs. 18.95 per day.
- (5) If the workman agrees not to claim the arrear of wages which could have been accrued due to change of his category from Category-I to Category-III. He would be eligible for getting the wages of Rs. 18.95 per day w.e.f. 1-5-1986 only."

The said Exhibit also shows that the said employee, did not agree firstly, to those terms and asked for time to consider them. The said employee has further stated that since he was always and still very ready and willing to serve the said Telephones and there was no fault or inaction on his part, but on his unwillingness to accept the same on the terms as indicated hereinbefore, a dispute being raised, the order of Reference in this case was duly appropriately made.

6. It was his contention that the said Telephones acted in a most arbitrarily, illegal and high-handed manner and also in gross violation of principles of natural justice, in retrenching and terminating him and that too, without following the necessary requirements and formalities under the said Act and as such, he should be reinstated with interest at the Bank rate, which according to him was 18 per cent per annum. That apart, such reinstatement, he claimed, should be decided with his due seniority and payment of such wages. It should, at this stage be indicated that the front portion and back portion of Ext. W-1 and the manner, the same has been disclosed, agreed with the one filed before the Tribunal with that of the brief copy of Mr. Consul i.e. Annexure 'A' to the Written Statement. But, the copy which was supplied with the Written Statement to the said Telephones did not and this fact, on being shown and mentioned by Mr. Hossain on November 5, 1992, has been duly recorded by me at the back of Ext. W-1, after comparing the same with the copy of the concerned affidavit viz. Ext. W-1. In fact, although the signature of the maker of the said Exhibit only and not his designation, was duly legible in the Tribunal's copy and the copy of Mr. Consul was also in the same manner, and the copy as produced by Mr. Hossain, was absolutely blank. A correct copy of the same of course, Mr. Hossain stated was supplied to him on August 20, 1992 i.e. at the stage of argument. Mr. Hossain pointed out that for such lapses and defects, he could neither take proper instructions nor get the officer concerned or could tender any evidence to the contrary. This service of a defective copy, Mr. Hossain submitted, was not

only inappropriate, but according to him, it was intentional and that too, to mislead all concerned. Such submissions were not absolutely without any substance and that has certainly, as submitted by Mr. Hossain, created some obstacle for leading proper evidence by the said Telephones. Mr. Consul, in his turn produced a slip of paper, showing that a corrected copy of Ext. W-1 was handed over to and collected by one of the officers of the said Telephones. This slip, as shown to the Tribunal, bore no signature or receipt by the officer, who has been alleged to have received the same and the said slip, was only a personal note of Mr. Consul, which in my view, will not establish such attempted service, as claimed. In fact, there was no order recorded in the order sheet, for such service and in fact, from the evidence of WW-1, it will appear that the original of the said Ext. W-1 was returned after comparing with the front portion of the xerox copy. The said WW-1 has of course stated in his evidence that he knew the signature of Tapas Kumar Banerjee S.D.P.O. and the said Ext. W-1, showed the dates on which he worked and the said Shri Banerjee signed in his presence. It should also be indicated that Mr. Consul did not accept the power to appear, which was given to him by the said employee. I have encircled the appropriate portion in the concerned document myself. This is of course a curable defect.

7. In the Written Statement as filed on May 15, 1990, the said Telephones, amongst others took the preliminary point that the dispute as raised and referred for adjudication, was incompetent, as the same was raised after a lapse of 10 years, the more so when, no cogent and reasonable explanation has been offered for such delay. There is no point of limitation prescribed or indicated for raising a dispute of this nature or any dispute under the said Act. The validity, bona fide or otherwise of the above point, will be dealt with hereafter.

8. It was also the case of the said Telephones that since P&T Financial Hand Book, Appendix 3, as disclosed with their written statement, requires the Muster Rolls to be preserved for 5 years only, it is not possible for them to check and verify, whether the said employee had worked in 77 Exchange with effect from January 15, 1977 to January 8, 1978, as alleged, furthermore when, no document or record, regarding the employment of the said employee or if at all, he was in continuous service during that period, could be verified for the reasons as indicated above. The said Telephones denied and disputed the relevant facts as stated in the written statement of the said employee, including the fact that he worked for 240 days during the period as mentioned above. It was also claimed by them that in the facts of this case, no charge sheet was required to be issued, more particularly when, the said employee was not under their regular employment. It has also been indicated that in this case, no injustice whatsoever, has been caused to the said employee and he will not also be entitled to reliefs, as prayed for and in such view of the matter, no interference should or need be made. It should also be noted that the parties to this dispute, in their submissions made copious reference to the above-mentioned Appendix 3 and the said Telephones elected, not to tender any oral evidence. The said employee on August 23, 1990, filed his rejoinder, contending amongst others, that there was no basis on the objection as raised by the said Telephones on the question of limitation and he has duly explained his casual workings in 1976 for few months and then, on regular basis from January 15, 1977. He reiterated that his termination on January 1978, was illegal and void on the grounds as indicated earlier. He has said about his representations to the officers concerned of the '77' Exchange. But, such representations, he has not duly and legally proved. There was also no such evidence, to establish his statements as made that, the officers of the said Telephones gave any assurance that those workers, who did not join the 20 workmen or in their proceedings as indicated, would receive the same treatment, if ultimately, the said proceedings succeed. It was claimed by him that even in terms of Clauses 3 and 4 of the said Appendix 3 as referred to hereinbefore, the said Telephones were and are bound and are required to maintain the records as indicated therein for 20 years or more, so the defence of non availability of Muster Rolls after 5 years and for that workings of 240 days by the said employee, as put forward, or for non payment on such account, was no excuse. The powers of condonation

of absence from duty by Class-I officers of senior time scale, as pleaded initially and now, was not proved duly and legally. Apart from the above, the said employee placed strong reliance on the records in Exts. W-2 and W-3 and has also agreed that subsequently, he did not agree to those terms as mentioned in paragraph 5 above.

9. Mr. Consul, appearing for the said employee, on the available pleadings and evidence, submitted that the termination of the said employee, who was a casual and daily rated one, but completed 240 days, without any order of termination or payment of compensation, was admittedly a retrenchment under the law. To establish that the said employee worked continuously at least for 240 days, he referred to Ext. W-1, which according to him duly established the employment of the said employee from January 15, 1977 to January 1978. It was of course not clear from the Exhibit, if the said employee was employed continuously or not. In fact, the said employee has not also given the dates of his employment or prove them by any legal evidences and he only case was that he worked for 240 days and there was no charge sheet or termination notice given to him and he further and only relied on Ext. W-1. I further feel that this Exhibit was not properly and duly proved and that too, in view of the nature and character of the same as indicated earlier, which was also the submissions of Mr. Hossain. I feel that the clandestine way in which the said Exhibit was produced i.e. without serving the appropriate copy to the said Telephones as indicated earlier, was not bona fide and proper and for such character of the said Exhibit, the said Telephones have suffered much in their defence and this Tribunal has not also received appropriate assistance, to have the case of the said employee disproved.

10. Mr. Consul of course contended that in terms of Clauses 3 and 4 of Appendix 3, the said Telephones were obliged and required to maintain the relevant records and the particulars of engagement of the said employee for 20 years and for all times respectively and as such, even if the Muster Rolls after 5 years in terms of Clause 9 thereunder, were not available, there was no difficulty for the said Telephones to dispute the case of the said employee and to discharge such onus, which lay very heavily on them and in not doing so, they were not admittedly refrained from producing relevant available records and as such, the Tribunal should draw adverse presumption against them. It is also very difficult to place reliance on the statements as contained in the rejoinder, as none of the paragraphs therein, have either been verified or even indicated in the affirmation portion.

11. I have indicated earlier, the nature and character of Ext. W-1 and the way, the same was sought to be proved and brought on record. If the said Exhibit was duly and bona fide proved and brought on record, with due opportunities to the said Telephones, there would not have been much difficulty, in relying on the same. But, since such reliance is not possible in this case, for the reasons as indicated, I feel, it difficult to place any reliance on the same and so also the bona fide or the manner, in which the same was produced and sought to be introduced. That being the position, really, no appropriate evidence of 240 days engagement of the said employee was established. This should be noted further that in the circumstances of the case, there was no opportunities to the said Telephones, to check, verify and deny the contents of the said Ext. W-1, in so far as they relate to the engagement of the said employee for the periods as mentioned or the signatures of the maker of the same.

12. In support of his submissions, Mr. Consul referred to the Award dated January 28, 1983, made by this Tribunal in Reference No. 14 of 1981, which was on the basis of the determinations in Tapan Kumar Jana Vs. General Manager, Calcutta Telephones & Ors. 1980(2) CLJ 488 and following the principles and law as laid down therein, answered the said Reference in the affirmative, in respect of all the casual employees, excepting two viz. serial Nos. 15 and 16 of that Reference, as they were not protected under Section 25F of the said Act, whereunder, only the workmen having been in continuous service for not less than one year, shall not be retrenched until certain conditions specified therein, are fulfilled. Regarding the other workmen concerned in the said Reference, the answer to the above question was answered in the affirmative. Here in this case, excepting the

entries in Ext. W-1, which was not duly and legally proved, there was no evidence of such employment.

13. The said Telephones have indicated as recorded earlier that, it was not possible to verify, if the said employee had worked in '77' Exchange, for the dates as alleged by him, because of the non availability of the relevant Muster Rolls, which under the said Appendix 3, have not been preserved after 5 years. The character of employment of the said employee has been indicated earlier and it was Mr. Hossain's contentions that for such character, the records as mentioned in Clauses 3 and 4 of the said Appendix 3, will not be relevant and necessary for this case. Clause 3 of the said same relates to the works and not to the employees employed Appendix 3, will not really help the said employee, as therein. Mr. Hossain reiterated his stand and that too, in my opinion, duly, in respect of the records as mentioned in Clause 4 of the said Appendix 3.

14. While on Ext. W-3, Mr. Hossain contended that in view of his own acceptance as indicated therein, the said employee was estopped from claiming otherwise. There was of course no due denial of the offers as recorded therein, which, of course, the said employee has not accepted ultimately. This Rule of estopped can well and very easily be applied in the case, against the said Telephones. As such, I hold that once the said Telephones have given such offer to the said employee, they should, in all fairness, honour their commitments and as such, the said employee, subject to the availability of suitable jobs, be employed in those terms as in Ext. W-3, more particularly when, such a vast administration like the said Telephones, require or would be requiring the services of the class of employees, to which the said employee belong.

15. I hold that the points regarding limitations, as raised by the said Telephones, in the facts of this case, do not have much substance. I of course indicate, there has been no evidence in the case about any assurance given to the said employee, on the basis of the results of Reference No. 14 of 1981, where, he was not a party and as a prudent man, he should not have waited for the results of the same.

16. On the findings as above, the Reference, I feel, should be answered in the affirmative and only to the extent as indicated.

This is my Award.

Dated, Calcutta,
The 30th November, 1992.

MANASH NATH ROY, Presiding Officer

नई दिल्ली, 23 दिसम्बर, 1992

क्र. आ. 117--औद्योगिक विवाद अधिनियम 1947 (1947 का 14) का धारा 17 के अनुसरण में, केन्द्रीय सरकार टेलीफोन डिपार्टमेंट कारवार के प्रबंधन के संलग्न विभागों और उनके कर्मचारियों के बीच कनवेंस में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कारवार के पंचवट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21 दिसम्बर, 1992 को प्राप्त हुआ था।

[सं. एल 40012/102/89 टाई आर (के वू) (पार्टे)]

के. वी. बी. उन्नी, डेस्क अधिकारी

New Delhi, the 23rd December, 1992

S.O. 117.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Telecom Department, Karwar and their workmen, which was received by the Central Government on 21st December, 1992.

[No. 1-40012/102/89-IR(DU)(Pt.)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated this 14th day of December, 1992

PRESENT :

Shri M. B. Vishwanath, B.Sc., B.L., Presiding Officer.
Central Reference No. 26/90

I Party :

Uday G. Naik,
Bobruvada,
Pallikeri,
Ankola,
North Kanara District 581301.

Va.

II Party :

Telecom. Dist. Engineer,
Telecom Department,
Karwar,
North Kanara 581301.

AWARD

In this reference made by the Hon'ble Central Government by its order No. L-40012/102/89-IR(DU) dated 16th April, 1990, under Section 10(1)(d) of I.D. Act, 1947, the point for adjudication as per schedule to reference is :

"Whether the action of the management of Telecom District Engineer, Karwar in refusing to employ Shri Uday G. Naik as casual labourer/Mazdoor from 1st October, 1985 is justified or not? If not, to what relief the workman is entitled?"

2. In the claim statement it is contended :

The I party joined the service as casual mazdoor in the office of the Telecom District Engineer, Karwar on 1st February, 1984. From 1st February, 1984 till 1st September, 1985, the I party worked there as casual mazdoor without any break. In all the I party has worked for a total number of 243 days continuously. In the month of September, 1985, the I party fell sick and was bed ridden till October, 1987 as he was suffering from peptic ulcers and hyperacidity. The I party became physically fit to attend the work in the month of July/August, 1987. Since July 1987 the I party went to the II party and requested orally to take him back on duty. The II party simply asked the I party to visit office, now and then. Even the written representations given by the I party were not considered. The absence of the I party was not intentional. It was bona fide. The II party ought to have taken the I party on duty and regularised his services. The award has to be passed directing the II party to take the I party on duty as casual mazdoor and regularise his services with all benefits from 5th October, 1987.

3. In the counter statement it is contended :—

It is true that the I party joined the II party as a casual mazdoor on 1-2-1984. It is false that the I party has worked continuously for a period of 243 days. The I party left the job on 6th May, 1985 and has not attended the work for more than 2-1/2 years. Suddenly after lapse of about 2-1/2 years the I party has approached the Divisional Officer, Karwar, requested to take him as casual mazdoor. Since the I party was absent from work his own for more than 5 months and as his service as a casual mazdoor was not required, the II party has not re-employed him. The plea of illness put forward by the I party is not within the knowledge of the II party. If the I party were confined to bed with illness, he could have taken leave of absence. He has not applied for leave. He has not subjected himself to examination by the medical board. The I party has concocted that he was ill. The I party is not a workman. The II party is not an industry as defined under the I.D. Act and so this Tribunal has no

jurisdiction to entertain the claim of the I party. The absence of the I party was intentional and he is not entitled to any relief.

4. On 18th September, 1990 the following issues have been framed :

1. Whether the II party proves that the II party is not an Industrial establishment and so this Tribunal has no jurisdiction?
2. Whether the II party proves that the I party is not a workman?
3. Whether the II party proves that its action in refusing to employ the I party as casual labour from 1st October, 1985 is justified?
4. What Award

5. On behalf of the II party M.W. 1 Gajanand Ramachandra Naik, Asstt. Engineer, has been examined. On behalf of the I party he has got himself examined and closed his case.

6. The II party is telecom department. In the counter statement it is stated that the II party is not an industry. The Learned Counsel for the II party also advanced an argument in this regard. It is laid down in 1980 Lab. I.C. 508 (Thapan Kumar Jana v/s. The General Manager, Calcutta Telephones and others) that service rendered by Telephone Department, being public utility service, the Telephone Department is an Industry within the meaning of Sec. 2(j) of I.D. Act. This is the law laid down by the Calcutta High Court. The same view has been taken by the Calcutta High Court in 1981 Lab. I.C. N.O.C. 68 (Calcutta) (Thapan Kumar Jana v/s. The General Manager, Calcutta Telephones and others). This is also the view taken by the Kerala High Court in 1983 Lab. I.C. 135 (Kunjan Bhaskaran and others v/s. Sub-Divisional Officer, Telegraphs, Changanassery and others). So I hold that the II party, Telephone Department, being service oriented, is an Industry as defined under Sec. 2(j) of the I.D. Act. Accordingly I hold issue No. 1 against the II party.

7. It is argued by the Learned Counsel for the II party that the I party workman, being a casual mazdoor (casual labourer) is not a workman. Sec. 2(s) of I.D. Act defines workman. It says that workman means any person employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. It is laid down in 1983 Lab. I.C. 135, referred to above, that services of casual mazdoor in the Department cannot be terminated orally contrary to Sec. 25(F). In 1980 Lab. I.C. 508, referred to above, it is laid down, as is clear from paras 19 and 20 at page 514 that a casual workman comes within the definition of workman in Sec. 2(s) of the I.D. Act. I hold the I party workman who was a casual mazdoor is a workman as defined under Sec. 2(s). Accordingly I hold issue No. 2 against the II party.

8. The I party has pleaded in the claim statement that from 1-2-84 till 1-9-85 he worked as a casual mazdoor without any break and in all he has worked for 243 days continuously. In his evidence he has stated that he was doing the work of cleaning and removing files. He has stated every day there would not be work and if there were no work he would stay in the office from morning till evening. He has stated that sometimes when there was no work he would be sent to dig for the cables. He has asserted in para 6 of his evidence that he worked in the department continuously for 243 days.

9. M.W.1 Gajanand Ramachandra Naik, Asst. Engineer in the II party has stated that the I party workman has not worked continuously. He has stated that Ex. M.3 is the xerox copy of the original showing how many days in each month I party workman has worked from 1-2-84 to 1-9-85. Ex. M.3 is admitted by I party. Ex. M.3 shows that there was break in almost all the months and that I party has not

worked continuously. But then the case of the I party is that some days there would be no work and the II party would not give him work on the ground that there was no work. That sometimes there would be no work in some months has been admitted by M.W.1. In cross-examination also M.W.1 says that some times there is no continuity of service because there will be no work. It has been laid down by our Hon'ble Court in 1986 K.L.J. 239 (H. V. Mukunda v/s. The Managing Director, K.S.R.T.C.) at page 243 that while counting the days of working, the days on which the workman had reported for work but not taken to work on account of non-availability of the work should also be taken into account alongwith the number of days on which he had actually worked. The hon'ble Calcutta High Court in 1980 Lab. I.C. 508, referred to above has been pleased to go a step further as is clear from para 19 at page 514. The Hon'ble Calcutta High Court has stated that if the workman use to report for work, he was entitled to payment not withstanding that no work was given to her.

10. Ex. M.13 is the attendance register produced by M.W.1. On some days Ex. M.13 shows that the I party workman has actually worked. Number of actual working days shown in Ex. M.13 each month corresponds to the number of working days shown in Ex. M.3, referred to above during some months in 1982 and 1983. (Some attendance registers admittedly not produced on the ground that they are not available despite search). On some days, each month, as against the name of I party workman in the attendance register Ex. M.13 it is marked in red ink "X". The Asst. Engineer M.W.1 has stated in cross-examination that, looking into the red ink "X" marks in Ex. M.13 it cannot be said whether the labourer was absent or whether there was no work. So M.W.1 is not sure whether on the days marked "X" in red ink I party workman was absent or whether there was no work. Since the say of M.W.1 is ambiguous, construction which is beneficial to the worker section, the workman, should be put. I hold that on the days "X" in red ink mark is put in Ex. M. 13, the I party workman was not given any work.

11. For the aforesaid reasons I hold that the I party has worked for more than 240 days continuously from 1-2-84 till 1-9-85. Admittedly Sec. 25(F), condition precedent to retrenchment of workman has not been followed. So the termination of the services of the I party workman has to be set aside. The I arty workman is entitled to reinstatement as a casual mazdoor.

12. The I party workman has produced Doctors certificate to show that he was having ventric ulcer and other ailment and so he was absent from the month of Sep. 1985 till October 1987 and so he could not attend to work. The Doctors who issued certificates have not been examined. There is another important point to disbelieve this portion of the evidence of the I party. Ex. W3 produced by the I party workman is the certificate issued by Dr. G. N. Hegde. According to this certificate the I party workman was under the treatment of the said Doctor from 1-11-86 to 22-9-87 and he was advised complete rest during that period. Ex. M.8 is xerox copy of a physical fitness certificate issued by the Government Doctor. Ex. M.8 is admitted by the I party. Ex. M.8 has been issued on 18-8-87. On the reverse of Ex. M.8 the Doctor has clearly stated that I party workman is medically fit to work as a casual mazdoor on daily wages in any department. To repeat, as per Ex. M.3 he was not till to work on 18-8-87 because he was advised rest from 1-11-86 to 22-9-87. But as per Ex. M.8 he was fit to work on 18-8-87. I agree with the Learned counsel for the II party that Doctor Certificates produced by the II party cannot be relied on. Anyway in view of my conclusion above the I party is entitled to reinstatement.

13. The learned counsel for the II party relied on Ex. M.12 circular issued by the Department which prohibits fresh recruitment and employment of casual labourers for any type of work. Ex. M.12 is dt. 30-3-87 on which day and prior

there too the I party workman was already working Ex. M.12 applies only to fresh recruitment. Ex. M.12 cannot take away the right of the I party.

14. All other documents and evidence not referred to by me above are not relevant. In any case they do not alter the conclusions reached by me above.

ORDER

The II party is directed to reinstate forthwith and take I party workman as a casual labourer/mazdoor.

In the circumstance of the case there shall be no continuity of service. The I party workman is not entitled to back wages. After the II party takes the I party workman as a casual labour in pursuance of this award, the I party workman, as per rules prevailing shall be regularised by the II party if the rules or provisions permit regularisation.

Reference accepted as stated herein and award passed accordingly.

Submit to Government.

(Dictated to Stenographer, typed by him, corrected, signed by me on this 14th day of December, 1992).

M. B. VISHWANATH, Presiding Officer

नई दिल्ली, 24 दिसम्बर, 1992

का. प्र. 118 -- औद्योगिक विवाद अधिनियम, 1947 (1947 का. 14) की धारा 17 के प्रसरण में, केन्द्रीय सरकार, बैंगलूर रेलवे ज़ोन, के प्रत्यक्षता के सबूत सिद्धांतों और उनके कार्य में के बीच प्रत्यक्ष में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधि-करण नई दिल्ली के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21 दिसम्बर 1992 को प्राप्त हुआ था।

[सं. एन 41011/10/90-आई आर डी यू-(पार्टी)]

के. वी. बी. उन्नी, डेस्क अधिकारी

New Delhi, the 24th December, 1992

S.O. 118.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of western Railway, Kota and their workmen, which was received by the Central Government on 23-12-92.

[No. L-41011/10/90-IR(DU) (Pt)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL, NEW DELHI

I.D. No. 126/90

In the matter of dispute between :

Shri Israr Beg & others, through the Divisional Secretary, Paschim Railway Karamchari Parishad Kota

Versus

The Divisional Railway Manager, Western Railway, Kota.

APPEARANCES :

Shri A. D. Grover for the workmen.

Shri Ram Niwas Pathak, Law Assistant for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-41011/10/90 IR(DU) dated 21-10-90 has referred the following industrial dispute to this Tribunal for adjudication :

"Whether the action of the Divisional Railway Manager Kota Division, Western Railway, Kota is justified in not considering 12 workmen as par annexure enclosed for the post of cleaner (Running side). If not, to what relief the workmen are entitled to?"

2. Both the representative for the parties were present today and made statement that the matter has since been settled. The claim of the workmen has been satisfied and no dispute now exist between the parties as 10 of these 12 workmen have already been put on the post of cleaner (Running side). One Man Singh has been transferred to Ratlam Division and Mata Din has been transferred to Jaipur Division. The representative for the workmen has made statement that as regards the ten employees the matter has been settled and he has reserved his right to raise fresh dispute if the other division where the two other workmen have been transferred are not put on the running side. In view of this situation no dispute exist between the parties and a No dispute award is passed in this case leaving the parties to bear their own costs.

11th December, 1992.

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 22 दिसम्बर, 1992

का. घा. 119--औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबन्धन-वृत्त के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण व श्रम न्यायालय चण्डीगढ़ के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार की 21 दिसम्बर 1992 को प्राप्त हुआ था।

[संख्या एल-12012/104/88--डी III (ए)/आई आर (बी I)]

एन. के. जैन, डेस्क अधिकारी

New Delhi, the 22nd December, 1992

S.O. 119.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal cum Labour Court, Chandigarh as shown in the Annexure, in the 2. GI/93—6

industrial dispute between the employers in relation to the management of State Bank of India and their workmen, which was received by the Central Government on the 21-12-92.

[L-12012/104/88 DII(A)IR(B-I)]

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S. K. JAIN, Desk Officer

ANNEXURE

BEFORE SHRI ARVIND KUMAR, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH

Case No. LD 64/88

Jagdev vs. State Bank of India

Fod the workman : Shri J. G. Verma.

For the management : Shri Ajay Kohli.

AWARD

Central Govt. vide gazette notification No. L-12012 (104)/86-D.III(A) dated 1st of August 1988 issued U/S 10(1)(d) of the I.D. Act referred the following dispute to this Tribunal for adjudication :

"Whether the action of State Bank of India in denying Dastri allowance to Shri Jagdev, Messenger at Sector-17, branch, Chandigarh is justified? If not, what relief is the workman is entitled and from what date ?"

2. Mr. J. G. Verma rep. of the workman has made a statement that the workman is not interested in pursuing his case and he wants to withdraw the present reference. In view of the statement of the rep. of the workman present reference is returned to the Ministry.

Chandigarh.

9-11-1992.

ARVIND KUMAR, Presiding Officer

नई दिल्ली, 22 दिसम्बर, 1992

का. घा. 120---औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबन्धन-वृत्त के संबद्ध नियोजकों और उनके कर्मचारियों के बीच अनुबंध में निहित औद्योगिक विवाद में औद्योगिक अधिकरण, उड़ीसा भुवनेश्वर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार की 22 दिसम्बर 1992 को प्राप्त हुआ था।

[संख्या एल 12012/114/91 आई आर (बी III)]

एन. के. जैन, डेस्क अधिकारी

New Delhi, the 22nd December, 1992

S.O. 120.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Orissa, Bhubaneswar, as shown in the Annexure; in the industrial dispute between the employers in relation to the management of State Bank of India and their workmen,

which was received by the Central Government on the 22-12-92.

[L-20012/114/91-IR(B-III)]

S. K. JAIN, Desk Officer

ANNEXURE

INDUSTRIAL TRIBUNAL : ORISSA : BHUBANESWAR

PRESENT :

Sri R. K. Dash, LL.B., Presiding Officer, Industrial Tribunal, Orissa, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 27 OF 1991

CENTRAL

Bhubaneswar, the 8th December, 1992

BETWEEN :

The management of State Bank of India,
Government Treasury Branch, Bhubaneswar,
Distt : Puri.

... First Party-management.

And

Their workman Sri Jyoti Bhusan Das, Clo
Bansidhar Das, At : Kajidiha, P.O.
Madhupatna, Dist : Cuttack-10.

... Second Party-workman

APPEARANCES :

None—For the first party-management.

Sri J. B. Das, the workman himself.—

For the second party workman.

AWARD

The Government of India in the Ministry of Labour in exercise of powers conferred upon it by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute for adjudication by his Tribunal vide their Order No. L-20012/114/91-IR B.III dt. 18-7-91 :—

"Whether the action of the management of State Bank of India, Government Treasury Branch, Bhubaneswar in terminating the service of Sri J.B. Das w.e.f. 9-6-90 is justified? If not, to what relief the workman is entitled to?"

2. Briefly stated the case of the second party-workman is that he was appointed as a Messenger with effect from 21-9-89 by the State Bank of India, Govt. Treasury Branch Bhubaneswar and since then he had been discharging his duty regularly till his services were terminated on 9-6-1990. He had worked more than 240 days within a period of one year of his employment. So, he being a workman as defined under the Industrial Disputes Act the management while doing away with his job neither served him any notice nor paid retrenchment compensation. So, according to the workman, this action of the management being

illegal and against the statutory provisions of law he should be reinstated with full back wages.

3. The management was served with due notice but it neither entered appearance nor filed written statement. So, hearing was taken-up ex parte.

4. The workman in his evidence has repeated what has been pleaded in his statement of claims. He would say that he had worked for more than 240 days in a period of one year and the management without any rhyme or reason put an end to his service without paying him any compensation.

5. In view of the pleading coupled with the sworn testimony of the workman, I hold that the action of the management in terminating his services is illegal and unjustified. He being a workman as defined under the Industrial Disputes Act, be reinstated in service with full back wages. Payment of back wages be made within three months from the date of publication of the Award. Dictated & corrected by me.

Presiding Officer, Industrial Tribunal.

नई दिल्ली, 28 दिसम्बर, 1992

का. नं. 121-—औद्योगिक विवाद अधिनियम 1947 (1947 केन्द्रीय सरकार गैसर्स टिस्को लि. की सिजुआ कोलियरी के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, संबंध में विदित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं. 1) धनबाद के पंचपट को प्रकाशित करता है, जो केन्द्रीय सरकार को 22-12-92 को प्राप्त हुआ था।

[सं. एन. 20012/274/89-आई गार (कोल-1)]

एच. सी. गोड, डेस्क अधिकारी

New Delhi, 28th December, 1992

S.O. 121.—In pursuance of Section 17 of Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal (No. 1) Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Sijua Colliery of M/s. TISCO and their workmen which was received by the Central Government on 21-12-92.

[No. L-20012/278/89-IR(Coal-1)]

HARISH GAUR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947

Reference No. 75 of 1990

PARTIES :

Employers in relation to the management of
Sijua Colliery under M/s. TISCO Ltd.

AND

Their Workmmen.

PRESENT :

Shri S. K. Mitra,

Presiding Officer.

APPEARANCES :

For the Employers : Shri B. Joshi, Advocate.

For the Workmen : Shri B. N. Sharma, Joint General Secretary.

STATE : Bihar.

INDUSTRY : Coal.

Dated the 30th November, 1992

AWARD

By Order No. L-20012/278/89-I.R.(Coal-I), dated the 18th April, 1990, the Central Government in the Ministry of Labour, has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2-A) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the management of Sijua Colliery under M/s. TISCO Ltd., in dismissing Shri Ram Prasad Dusadh (Alias Tejan Dusadh), Pump Operator, Ticket No. 75879, under dismissal letter No. ASMG/65/46 dated 30-12-1986 is justified? If not, to what relief is the workman concerned entitled?"

2. The case of the management of Sijua Colliery of M/s. TISCO, Jamadoba, as disclosed in the written statement-cum-rejoinder, details apart, is as follows :

The Director of Collieries received an application on 16-5-86 from Bhatu Nonia that Tejan Dusadh alias Ram Prasad Paswan outraged the modesty of his daughter Smt. Kanti Devi and on protest assaulted her. Bhatu Nonia also disclosed that Ram Prasad Paswan was convicted in case No. 2324/80 by the Judicial Magistrate and he was sentenced to undergo imprisonment for one year and one month for the offence and that the conviction of Ram Prasad Paswan was upheld by the District & Sessions Judge. He prayed that the action may be taken against Ram Prasad Paswan. On the basis of the application of Bhatu Nonia, a chargesheet dated 10-8-86 was issued to Ram Prasad Dusadh under Clause 19(15) of the Certified Standing Orders. He submitted his reply dated 1-9-86 to the chargesheet which was not found satisfactory and departmental enquiry was held. The Enquiry Officer held the departmental enquiry in presence of the concerned workman. He gave full opportunity to the concerned workman to cross-examine the witness for the management and to examine his own defence witness. He availed himself of the opportunity given to him. Upon conclusion of domestic enquiry and on consideration of evidence on record, the Enquiry

Officer submitted his report on 7-10-86 in which he found the concerned workman guilty of the charge of misconduct brought against him. The Agent of the Colliery by letter dated 30-12-86 dismissed the concerned workman from service.

3. The case of the concerned workman, as appearing from the written statement submitted by him, is as follows :

The concerned workman was working as Pump Operator in Pit No. 2 of Sijua Colliery, P.S. Jogta, Dist. Dhanbad. He has put in fairly long period of service of about 27 years and his service record is very clean. The Manager, Sijua Colliery, issued chargesheet against him under Clause 19(15) of the Certified Standing Orders of the TISCO-management which envisages misconduct for commission of an offence involving moral turpitude. The concerned workman was dismissed from service with effect from 10-1-86 by the letter of the Agent dated 30-12-86/8-1-87. He raised an industrial dispute before the Asstt. Labour Commissioner (Central), Dhanbad, which could not be resolved during the conciliation proceeding. The alleged misconduct was committed on 17-7-79 for which no complaint was lodged by any aggrieved person. By misuse of the powers of Certified Standing Orders, an over-stale charge was framed after a long lapse of more than 7 years and he denied the charge by submitting explanation dated 1-9-86. He appeared in the domestic enquiry and a solitary witness of the management was examined to his presence. After conclusion of enquiry, the Enquiry Officer submitted his report. But he did not apply his mind impartially and judiciously. The Agent of M/s. TISCO did not act honestly and fairly and passed order for his dismissal from service by quoting the contents of F.I.R. and making reference of the judgement of the criminal court. The charge against him was not established and Clause 19(15) of the Certified Standing Orders has been wrongly and illegally applied. In the circumstances, the concerned workman has prayed that he be reinstated in service with full back wages.

4. In rejoinder to the written statement of the concerned workman, the management has stated that Ram Prasad was appointed as General Mazdoor some time in 1961 and was working as Pump Operator at the relevant time. The management has reiterated that it received an application from Bhatu Nonia on 16-5-86 alongwith a copy of judgement of the criminal court, which was dated 30-1-86. The management has denied all other allegations made by the concerned workman.

5. In the rejoinder to the written statement of the management, the concerned workman reiterated his own case.

6. The case of the management is that Bhatu Nonia by application dated 16-5-86 reported to the Director of Collieries that Tejan Dusadh alias Ram Prasad Paswan outraged the modesty of his daughter Smt. Kanti Devi and on protest assaulted her and Ram Prasad Paswan was convicted for outraging the modesty of her daughter for one year and one month by the

Judicial Magistrate in Case No. 2324/80 and that his conviction was upheld by the District & Sessions Judge. The application of Bhatu Nonia has been marked Ext. M-8. It discloses the position as asserted by the management. The management has also submitted a photo copy of judgement passed in criminal appeal No. 463/81 passed on 30-1-86. The conclusive portion of the judgement of the Second Addl. Sessions Judge, Dhanbad, runs as follows (Ext. M-6):

"On a consideration of the facts and circumstances of the case I am of the view that the prosecution has been able to prove the charges U/S. 354 and 323 I.P.C. The conviction by the learned Magistrate under these sections is justified. The learned Magistrate has sentenced the accused to undergo R.I. for one year U/S 354 I.P.C. and one month U/S 323 I.P.C. It appears from the record that this accused was forwarded to the Court of Chief Judicial Magistrate on 18-7-1980 and remained in Jail till 11-10-1980. Practically, he was in Jail for 3 months and he has suffered much. Therefore, I think it proper that sentences passed by the lower court is reduced to his sentences already undergone by him in the Jail Custody.

In the result, the appeal is dismissed with the above modification."

7. Section 354 of I.P.C. envisages that assaults or uses criminal force to any woman with intention to outrage her modesty, is an offence. The concerned workman was convicted by the criminal court for commission of offence under sections 354 and 253 of I.P.C.

8. On receipt of application of Bhatu Nonia a chargesheet was issued by the management to the concerned workman which reads as follows (Ex. M-1) :

"On 17-7-79 at about 6.30 A.M. Smt. Kunti Devi D/o Bhatu Nonia, aged 17 years, went to attend nature's call in a jungle situated at about 15 to 20 feet from her residence in the Bastee near Jogta Police Station. While she was attending nature's call you were peeping from a near by bush. On seeing you she got up and started proceeding towards her house. You chased and caught hold of her and molested her breast and also attempted to outrage her modesty. She then shouted out and you gave her a blow with your fist on her nose which resulted in profuse bleeding. On hearing her shout her brother, Shri Sohan Nonia, came out and you fled.

An FIR was lodged by Shri Bhatu Nonia with the Jogta Police Station and subsequently you were convicted by Shri Ishwari Prasad, Judicial Magistrate, 1st Class, Dhanbad, under Section 323 and 354 of the Indian Penal Code and you were sentenced to rigorous imprisonment for one year under section 354 of I.P.C. and one month under section 323 of I.P.C. both to run concurrently. This decision was upheld by the 2nd Additional Judge, Dhanbad by dis-

missing your appeal. The above act on your part amounts to conviction by a court of law arising out of moral turpitude.

You are allowed 72 hours from the date of receipt here of to give your explanation. Any representation that you may make in this connection will be taken into consideration before passing orders."

The explanation to the chargesheet of the concerned workman has been marked Ext. M-2. It appears that the Enquiry Officer held the enquiry in conformance to the principles of natural justice. It was held so by my order dated 25-3-92. The Enquiry Officer found the concerned workman guilty of the charge involving moral turpitude under Clause 19(15) of the Certified Standing Orders of the company.

9. Shri B. N. Sharma, authorised representative of the concerned workman, has contended that the domestic enquiry was held on the basis of chargesheet after a lapse of seven years and so the charge is over-stale. But the facts indicate otherwise. The learned Judicial Magistrate, 1st Class, Dhanbad, found the concerned workman guilty of the charge under Sections 354 and 323 of I.P.C. and sentenced him to undergo rigorous imprisonment for one year under Section 354 and one month under Sec. 323 of I.P.C. and both the sentences were to run concurrently. The Addl. Judge, 2nd Court, Dhanbad heard the appeal against the order of conviction and sentence imposed upon the concerned workman. He passed his judgement on 30-1-86 upholding the conviction of the learned Judicial Magistrate, but reduced the period of imprisonment. The matter was reported to the management by Bhatu Nonia, father of the victim girl on 16-5-86 by an application and the management issued the chargesheet against the concerned workman on 10-8-86. This being the factual position, I am constrained to hold that the charge against the concerned workman is not over-stale.

10. Shri B. N. Sharma has submitted one Tejan Dusadh was prosecuted before the Judicial Magistrate, 1st Class, Dhanbad, for commission of offence under sections 354 and 323 of I.P.C. and there is no where any evidence to indicate that Tejan Dusadh is the other name of Ram Prasad Dusadh, the concerned workman. The order of reference discloses that the concerned workman is Ram Prasad Dusadh alias Tejan Dusadh. In the domestic enquiry, on being asked as to what was his name, Ram Prasad Dusadh disclosed that his name was Ram Prasad Dusadh alias Tejan Dusadh. This being so, it is sufficiently established by evidence that Ram Prasad Dusadh is also known as Tejan Dusadh. Hence, I find no substance in the submission of Shri Sharma and so I overrule his contention.

11. Shri B. N. Sharma has contended that there was no nexus between the offence of the concerned workman and his place of employment. According to him, such nexus is necessary in order to hold the concerned workman guilty of misconduct of moral turpitude.

The relevant Certified Standing Orders of the company reads as follows :

"Clause 19(15); Conviction in any court of law for any criminal offence involving moral turpitude."

This clause does not envisage that the criminal offence involving moral turpitude must be committed in the course of employment or within the premises and precinct of the establishment of the company. The clause spells out that conviction in any court of law for any criminal offence involving moral turpitude is a misconduct. Admittedly, the concerned workman committed an act of misconduct of moral turpitude as envisaged under section 354 of I.P.C. Hence, he was rightly found guilty by the Enquiry Officer and the management was justified in dismissing him from service.

12. Accordingly, the following award is rendered—the action of the management of Sijua Colliery under M/s. TISCO Ltd. in dismissing Ram Prasad Dusadh, alias, Tejan Dusadh from service is justified.

In the circumstances of the case, I award no cost.

S. K. MITRA, Presiding Officer

नई दिल्ली, 28 दिसम्बर, 1992

का. प्र. 122.—औद्योगिक विवाद अधिनियम 1947, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मैसर्स. भारत कोकन कोला लिमि. का गोलुकदीह ओपन कास्ट प्रोजेक्ट के प्रबन्धन के संदर्भ निरीक्षणों और उनके कर्मचारियों के बीच अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

[सं.एल 20012-(151/90 आई आर (कोल-I)]

एच. सी. गोड, डेस्क अधिकारी

New Delhi, the 28th December, 1992

S.O. 122.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal (No. 1) Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Golukdih Open Cast Project of M/s. S.C.C.L. and their workmen which was received by the Central Government on 21-12-92.

[No. L-20012/152/90 IR(C.I.)]

HARISH GAUR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947

Reference No. 241 of 1990

PARTIES :

Employers in relation to the management of Golukdih Open Cast Project of M/s. B.C.C. Ltd.

AND

Their Workmen.

PRESENT :

Shri S. K. Mitra, Presiding Officer.

APPEARANCES :

For the Employers : Shri S. N. Sinha, Advocate.

For the Workmen : Shri J.P. Singh, Advocate.

STATE : Bihar.

INDUSTRY : Coal.

Dated the 27th November, 1992

AWARD

By Order No. L-20012(152)/90-I.R. (Coal-I), dated the 1st October, 1990, the Central Government in the Ministry of Labour, has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2-A) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the action of Golukdih Open Cast Project under Bastacolla Area of M/s. BCCL in dismissing Shri Ramdeo Mahato, Mining Sirdar under Dismissal order No. GOCP/PD/89/2377 dated 15/16-2-89 is justified ? If not to what relief the workman is entitled ?"

2. The case of the management of Golukdih Open Cast Project under Bastacolla Area of M/s. B.C.C. Ltd. as disclosed in the written statement-cum-rejoinder, details apart, is as follows :

The concerned workman was working as Mining Sirdar in Golukdih Open Cast Project of Bastacolla Area. On receipt of a report in regard to certain acts of misconduct having been committed by him, the Agent of Golukdih Open Cast Project issued him with a chargesheet dated 1-9-88 under the Certified Standing Orders of the colliery for giving false information regarding his name and father's name at the time of his appointment which constituted misconduct and also for commission of fraud and dishonesty in connection with employer's business which are serious misconduct under Clause 18(1)(a)(c) of the Certified Standing Orders. He submitted his reply to the chargesheet on 7-11-88. The explanation submitted by him was not found satisfactory and a detailed enquiry was ordered by the management and Shri S. P. Roy, Dy. Personnel Manager, Bastacolla Area was appointed Enquiry Officer. Shri Roy held enquiry in accordance with the principles of natural justice. In the course of domestic enquiry he was given full opportunity to cross-examine the witness for the management and to give evidence in support of his defence. He availed himself of the opportunity. The Enquiry Officer submitted his report on 5-1-89 and upon consideration of materials on record he found him guilty of the charge levelled against him. The re-

port of the Enquiry Officer and the enquiry report was considered by the appropriate authorities. The authorities concerned came to the conclusion that he should be dismissed from service. Accordingly, the Agent of Golukdih Open Cast Project dismissed him from service with effect from 15/16-2-89. The charges levelled against him are of serious in nature and the employers are justified in dismissing him from service.

3. The case of the concerned workman, as disclosed in the written statement submitted by the sponsoring union, Rashtriya Colliery Madzoor Sangh, briefly stated, is as follows :

The concerned workman was a permanent employee of Golukdih Open Cast Project as a Mining Sirdar in Technical Grade 'C'. Earlier he was working in Kuya Colliery at the time of private owner. This owner had the habit of changing name of the employees for their own convenience, profit and exploitation and as such they changed the name of the concerned workman, Ramdeo Singh to that of Ramdeo Mahato. At the time of take over in 1973 the name of the concerned workman was entered in the books of M/s. BCCL as Ramdeo Mahato. His father's name is Ramdas Singh which was recorded in the book of the company. He is a genuine employee and passed Mining Sirdarship examination while he was working in Kuya colliery and the Mining Sirdarship Certificate bears his photograph as Ramdeo Mahato. When he came to know that his surname has been wrongly changed, he made several representations in persons and in writing for rectification of the same as Singh from Mahato the last being on 15-3-79. Subsequently on 22-11-83 he swore an affidavit in the Court of Sri S. K. Singh, Notary, Dhanbad, declaring his correct name and this fact was also published in the local Hindi news paper 'Awaz' in its issue of 30th November, 1983. The management took no action to rectify his name as declared by him. On 1-11-88 the management issued a chargesheet against him for commission of misconduct under Clause 18(1)(a)(o) of the Standing Orders for fraud and dishonesty in connection with employers business and also for providing false information regarding his name, father's name, age etc. at the time of employment. He gave reply to the chargesheet on 7-11-88 denying the charge. The employer was biased and prejudiced against him and wanted to get rid of him by hook or crook and ordered a domestic enquiry into the matter. The enquiry held by the Enquiry Officer was perverse and it was held against the principles of natural justice. He was not given full opportunity to present his own case as the person who reported his alleged impersonation was never presented in the enquiry. The charges of dishonesty or fraud was not applicable to him nor has it been established in the enquiry. It appears that the management was influenced by the news item published in the issue of 'Janmat' on 27-9-88, a Hindi Daily to the effect that Ramdeo Mahato was an imposter. It is alleged that the management took a crusader to brighten its image and after holding a perfunctory enquiry, dismissed him from service without taking into consideration the various representations made by him. The Agent was so much vindictive that in his dismissal letter dated

15/16-2-89 he ordered the forfeiture of his gratuity which was not a part or a matter connected with the charge-sheet. He was given two punishments for one and the same offence without giving him opportunity to explain his defence. His dismissal from service is illegal, arbitrary and mala fide. In the circumstances, the union has prayed that the concerned workman be reinstated in service with full back wages and consequential benefits.

4. In rejoinder to the written statement of the sponsoring union, the management has denied that prior to take over of the colliery the employer used to change the name of the employees for their own convenience. The colliery was taken over by Ms. B.C.C. Ltd. in 1973 and the concerned workman could take step for correction of his name in November, 1983 i.e. after a lapse of more than ten years from the date of take over of the colliery by M/s. B.C.C. Ltd. He appeared in Mining Sirdar's Certificate examination 1979 but did not make any effort to correct his name from Ramdeo Mahato to Ramdeo Singh. He filled in in Form 'A' of C.M.P.F and put his signature as Ramdeo Mahato in 1979. He filled in other forms putting therein his signature as Ramdeo Mahato. All these show that he impersonated somebody intentionally. It has been asserted that the domestic enquiry was held in accordance with the principles of natural justice. The Enquiry Officer has rightly come to the conclusion that the concerned workman impersonated in order to get employment by back door method.

5. In rejoinder to the written statement of the management, the sponsoring union has reiterated the facts as mentioned in its written statement.

6. At the instance of the management, the fairness and propriety of the domestic enquiry was considered as preliminary issue in the course of which the management examined the E.O. Samir Kumar Roy as MW-1 and laid in evidence some items of documents which have been marked Exts. M-1 to M-7.

Neither the concerned workman nor the sponsoring union has examined any witness nor have they adduced any documentary evidence.

Shri J. P. Singh, advocate appearing for the sponsoring union, conceded that the domestic enquiry was held fairly and properly. Accordingly, it was held that the domestic enquiry was held fairly and properly. Thereafter the case was heard on merits.

7. Admittedly, the concerned workman was working as Mining Sirdar in Golukdih Open Cast Project under Bastacolla Area of M/s. B.C.C. Ltd. The written statement of the management discloses that on receipt of a report in regard to certain acts of misconduct having been committed by the concerned workman, the Agent of Golukdih Open Cast Project issued him with a chargesheet dated 1-9-88 under Certified Standing Orders of the Colliery for giving false information regarding his name and his father's name at the time of his appointment which constituted misconduct and for commission of fraud and dishonesty in connection with employers business or property which is also a misconduct under Cause 18(1)(a) and Cause 18(1)(c).

of the Certified Standing Orders of Golukdih Open Cast Project. The Certified Standing Orders of Golukdih Open Cast Project has not been produced by the management either in the domestic enquiry or at the time of hearing of the present industrial dispute. Anyway, Clause 17(1)(a) and 17(1)(o) of the Model Standing Orders envisage that theft, fraud or dishonesty in connection with employers business or property and giving false information regarding one's name, age, father's name, qualification etc. at the time of employment as misconduct.

Anyway, the charge-sheet issued against the concerned workman reads as follows (Ext. M-1) :—

"It has been reported that you have furnished wrong & false information to the management about your name, father's name etc. at the time of your appointment. By furnishing wrong & false information about your name and your father's name you have done fraud and dishonesty with the employers business which is a serious misconduct under the following para of the Certified Standing Order of the colliery/O.C.P. by which you are governed.

"18(1)(a) Fraud or Dishonesty in connection with employer's business.

(o) Giving false information regarding one's name, father's name, age etc. at the time of employment.

You are hereby called upon to explain in writing within 48 hours of receipt of this charge sheet as to why suitable disciplinary action should not be taken against you for the above misconduct.

Pending departmental enquiry & its findings, you are hereby suspended from your duties with effect from 2-11-88.

The concerned workman submitted his reply to the charge-sheet on 7-11-88 in Hindi. The English translation of the reply of the chargesheet (Ext. M-2) reads as follows :

"I beg to state that the charge levelled is completely baseless, because in the Company's main records my all particulars are correct except surname (The Company in order to avoid payment of Provident Fund Bonus used to change surnames, which after Nationalisation could not be corrected). I did not give wrong information of any type to the Company.

I never committed fraud or dishonesty in the affairs of the Company. The charge under clause 18(a) & (o) of the Standing Order is completely baseless, meaningless and illegal. I deny this charge.

If somebody has reported against me, it has been done by him with selfish ends, and with intention to remove me from service and to harass me and my family members by causing financial loss.

I thus pray that the charge be dropped and I may be permitted to join my duty."

Not being satisfied with the reply to the chargesheet, the management held departmental enquiry into the charges levelled against the concerned workman. MW-1 Samir Kumar Roy, presently holding the post of Dy. Personnel Manager, was appointed Enquiry Officer by the Agent of Open Cast Project. Shri Roy held the domestic enquiry in the course of which Murari Mohan, Manager of Golakdih Open Cast Project deposed as witness for the management. The management laid in evidence a number of documents which were marked exhibits by the Enquiry Officer. The Enquiry Officer also examined the concerned workman and the witnesses produced by him and admitted in evidence the documentary evidence produced by the concerned workman. The Enquiry Officer considering the evidence on record came to the finding that the charges against the concerned workman were fully established without assigning any reason as to why he discarded the evidence produced by the concerned workman in support of his defence. Thereafter, the management, relying upon the report of the Enquiry Officer dismissed the concerned workman from service with effect from 15/16-2-89.

8. The chargesheet discloses that it was reported to the management that the concerned workman furnished wrong and false information to the management about his name, father's name etc. at the time of his appointment which constituted misconduct and that he committed fraud or dishonesty in connection with employers business or property which was also a misconduct. Sri M. M. Roy, Manager of Golakdih Open Cast Project, stated before the Enquiry Officer that he got information of the change of surname by the concerned workman from 'Awaz', a daily news paper of Dhanbad dated 27-10-83 and that after this the management heard whisper in the year 1988 and on the basis of these information the chargesheet was issued and served upon the concerned workman. As a matter of fact, the concerned workman published information in the issue of 'Awaz' dated 30-10-83 disclosing that Mahato was not his surname and Singh was his surname. In fact, another news item was published in the issue of 'Janmat' a news daily of Dhanbad dated 27-9-88 that the concerned workman Ram Kumar Singh had been working in the name of Ramdeo Mahato in Golukdih colliery. Acting upon this information the management issued the chargesheet against the concerned workman.

The concerned workman disclosed in his statement before the Enquiry Officer that he was employed in Kuya colliery in 1972 and one contractor, Sri Kamala Rai helped him in getting employment and since the owner of the colliery was a Marwari and he was allergic to the surname 'Singh' his surname was changed to Mahato as it was a question of livelihood and he kept on working in that name. He further stated that he regularly represented to the company to make correction of his surname and as a proof of the same he submitted one of his representation which was worked DW-1 dated 15-3-79. This representation was made to the Manager of Kuya Colliery. Thereafter he swore an affidavit on 22-11-83 in the Court of Sri S. K. Singh, Notary, Dhanbad, disclosing that he had

got two names, namely, Ramdeo Mahato and Ramdeo Singh, son of Ramdas Singh. This document was admitted in evidence in domestic enquiry as DW-2. Thereafter he published information in the issue of 'Awaz' dated 30-10-83 disclosing his surname as Singh. This document was marked in domestic enquiry as DW-3. Dhansukh Rao has been working in Kuya Colliery since 1972 and at the time of domestic enquiry he was posted as Underground Munshi of the said colliery. He stated before the Enquiry Officer that in 1972 the concerned workman worked as underground Loader in Kuya Colliery and his name was recorded as Ramdeo Singh in Register, but he did not know when the name of Ramdeo Singh was changed to Ramdeo Mahato. Sri Kunmun Shaw has been working as Mining Sirdar in Ganhoodih Colliery since 1980. He stated before the Enquiry Officer that he worked as Trammer under Kamala Roy/D. N. Roy, contractor at Kuya Colliery and that Ramdeo Mahato worked as Loader and at that time he was known as Ramdeo Singh. Sri Amrit Harijan, another witness for the concerned workman, stated before the Enquiry Officer that he has been working in Kuya Colliery since 1972 and that Ramdeo Mahato worked as Loader under Kamala Roy/D. N. Roy, contractor and at that time he was known as Ramdeo Singh. But when his name was changed to Ramdeo Mahato was not known to him. Sri Ram Awatar Yadav has been working in Kuya Colliery since for the last 16 years and at the time of domestic enquiry he was holding the post of Overman. He stated before the Enquiry Officer that he worked as Trammer under Kamala Singh/D. N. Singh, contractor and that Ramdeo Mahato also worked as a Trammer and was addressed as Ramdeo Singh by all. According to him, the company changed the name and surname of workmen to pay less bonus and provident fund. He has cited some instance of change of surname by erstwhile owner, such as, the name of Budhan Shaw was changed to Budhan Mahato, Rajalal Dubey to Rajalal Dwivedi, Ganauri Shaw to Ganauri Mahato, Tokhan shaw to Tokhan Mahato, and Shiva Brat Bhuyan to Soharai Bhuyan and these workmen have been working in different capacities. Thus, the evidence laid by the concerned workman in domestic enquiry firmly establishes that the concerned workman was known as Ramdeo Singh while he was working in Kuya Colliery and that his surname was changed by the erstwhile owner from Ramdeo Singh to Ramdeo Mahato and that this devious means were adopted in order to deprive the workman of their rightful bonus and provident fund. Besides, the concerned workman made representation to the management for change of his surname and as hard evidence he submitted application before the Agent of Kuya Colliery for changing his surname from Ramdeo Mahato to Ramdeo Singh was back on 15-3-79. Then again, he swore an affidavit before the Notary on 22-11-83 disclosing that he was known by two names, Ramdeo Mahato

and Ramdeo Singh and this was published in the issue of Awaz, a local daily, on 30-10-83. In spite of this fact, the management shut its eyes to the matter and work up from hibernation as late as on 1-11-88 when it issued the chargesheet to the concerned workman for furnishing his name, father's name falsely and commission misconduct of fraud and dishonesty in connection with employers business or property.

9. Shri S. N. Saha, learned Advocate for the management, has contended that the concerned workman submitted Pension Form 'B' on 4-5-79, Form 'Q' in connection with CMPF dated 4-8-79, CMPF 'A' dated 4-5-79 and Coal Mines Family Pension Scheme dated 4-8-79 in which he disclosed his name as Ramdeo Mahato. The reason of his doing so is very obvious. Since the management did not correct his surname despite his representation, he had to put his name as recorded in the register of the colliery. It appears that the concerned workman obtained sirdarship certificate dt. 8-2-79 under the Mines Act. In this certificate his name appears as Ramdeo Mahato, son of Ramdas Singh. As the management did not correct his surname, he had to appear at the examination by the name as appearing in the register of the colliery. In my opinion, the concerned workman had no intention to deceive the management in any way nor had he any intention to gain wrongful advantage to him or wrongful loss to the management. There is not a whit of evidence to indicate that he has been impersonating somebody else by adopting the name of Ramdeo Mahato. Hence, considering the evidence on record and facts and circumstances of the case, I am of the firm opinion that the Enquiry Officer was not justified in holding the concerned workman guilty of charges levelled against him. So, the punishment of dismissal from service imposed on the concerned workman on the basis of the report of the Enquiry Officer must be set aside and he should be reinstated in service with full back-wages.

10. Accordingly, the following award is rendered—the action of the management of Golukdih Open Cast Project under Bastacolla Area of M/s. B.C.C. Ltd. in dismissing Shri Ramdeo Mahato alias Ramdeo Singh, Mining Sirdar, by order of dismissal dated 15/16-2-89 is not justified. The management is directed to reinstate him in service within one month from the date of publication of the award and to give him full back wages from the date of his dismissal from service till his reinstatement, and to give him continuity of service.

In the circumstances of the case, I award no cost.

This is my award.

Sd/-

S. K. MITRA, Presiding Officer